

**THE REGULATION OF CANNABIS POSSESSION,
USE AND SUPPLY**

**A discussion document prepared for The Drugs and Crime Prevention
Committee of The Parliament of Victoria**

National Drug Research Institute
(Formerly The National Centre for Research into the Prevention of Drug Abuse)

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Executive summary

This executive summary comprises: A summary of the major sections of the discussion document as well as a detailed presentation of the preferred model and its supporting rationale and explanatory notes. Of necessity it is longer than the typical executive summary because the original draft of the discussion document submitted to the Drugs and Crime Prevention Committee was to be widely circulated to stimulate public discussion. It was envisaged that this executive summary might form the core of the most widely disseminated product of the project. It was intended that readers could then be referred to the whole discussion document for a more thorough coverage of the issues and the evidence presented.

Background

In its 1996 document, *Drugs and Our Community*, the Premier's Drug Advisory Council, chaired by Professor David Penington, made eight sets of recommendations regarding Victoria's approach to dealing with problems associated with illicit drug use. The central theme of the recommendations was that illicit drug use should be treated as a health issue, rather than a purely law enforcement issue. Each recommendation subscribed to the principle of 'harm minimisation', or 'harm reduction' – that the central focus in drug policy should be the reduction of the personal, social and economic harms associated with drug use, rather than simply focusing on reducing drug use itself (Premier's Drug Advisory Council, 1996).

The majority of the recommendations of the Premier's Drug Advisory Council were adopted by the Parliament and in 1996 their implementation commenced as

Victoria's *Turning the Tide* (TTT) Drug Reform Strategy. The recommendation to reduce drug-related harms by amending the *Drugs, Poisons and Controlled Substances Act 1981* was not supported. The proposed amendment would have resulted in the use and possession of small quantities of cannabis no longer being treated as criminal offences but being regulated in other ways. The Government decided that the other educational, health, treatment and rehabilitation options suggested in *Drugs and Our Community* should be given a chance to work in order that a full and accurate assessment of the need for further changes to the laws regarding cannabis could be made (State Government of Victoria, 1996). As a result, the Parliamentary Drugs and Crime Prevention Committee, responsible for ensuring the evaluation of the implementation and evaluation of the TTT strategy, called for tenders to produce for Victoria a high quality discussion paper for broad public distribution to stimulate public debate regarding the options for cannabis control (Tender Documentation, March 1998).

The document was required to take into account available scientific evidence and arguments in order to:

- Consider options for the legal regulation of cannabis possession, use and supply suitable to a harm minimisation framework
- Provide a comparative analysis and evaluation of the practicality, effectiveness and potential benefits of the alternative forms of regulation
- Offer a recommended model for the Victorian situation.

This document is the result of this process. It was prepared by an independent consortium of researchers with considerable experience in drug policy, research and treatment in general, and study of cannabis regulation in particular. Independent comment on earlier drafts of the document was also provided by five other experts in the field. Two senior legal counsel offered opinion on the draft of the model recommended for regulation of cannabis possession, use and supply in Victoria which concludes the document.

Cannabis use and associated harms

Prevalence of cannabis use

Cannabis is the most widely used illicit drug in Australia. The estimated overall prevalence of lifetime cannabis use among Australians aged 14 years and over increased from 12% in 1973 to 39% in 1998 (Australian Institute of Health and Welfare, 1999; Hall & Nelson, 1996; Donnelly & Hall, 1994). Cannabis use within the last 12 months has remained relatively stable at approximately 13% between 1985 and 1995 but has increased to 18% in 1998 (Australian Institute of Health and Welfare, 1999; Makkai & McAllister, 1998; Porritt, 1991). An Australia-wide survey of secondary school students showed that 36% of students aged 12 to 17 had used the drug at least once. The likelihood of use increased with age, and males were more likely to use than females (Letcher & White, 1998).

The Victorian prevalence of lifetime cannabis use and cannabis use within the last 12 months is comparable to that reported nation wide (DHS, 1998). The age and gender profile of cannabis users is similar at state and national level (DHS, 1998). Drug users in Victoria, as in other states, report cannabis to be readily available and high in potency (Rumbold & Fry, 1998).

Cannabis health-related harms

Like any legal or illegal drug, cannabis has the capacity to cause harm. It has been argued by Hall (1995a) that while cannabis is not a harm free drug, the most probable public health risks of cannabis use itself are likely to be small to moderate in size because of the relatively small proportion of the population who are heavy users.

The acute physical effects of cannabis consumption include changes in heart rate and blood pressure, impairment of psychomotor functioning and deterioration of attention and memory (Hall & Solowij, 1998; Hall, Solowij & Lemon, 1994). Studies of motor vehicle accidents have found no relationship between crash culpability and presence of cannabinoids (Hunter, Lokan, Longo, White & White, 1998). However, there is evidence that while the adverse effects of cannabis on driving performance are relatively small, there may well be driving situations where the influence of cannabis may be dangerous (Robbe, 1994).

Chronic cannabis use is probably associated with increased susceptibility to respiratory disorders, dependence, precipitation/exacerbation of psychosis in vulnerable individuals and subtle cognitive impairment. Chronic cannabis use is possibly associated with cancer of the mouth, pharynx and oesophagus, decreased birth weight and length, increased risk of leukemia among children whose mothers used cannabis during pregnancy and under achievement of educational/occupational potential (Hall, 1995b; Hall, Solowij & Lemon, 1994; Solowij, 1998).

In 1996/97 about 11% of all those presenting to Victorian drug and alcohol treatment agencies identified that cannabis was their main drug problem (DHS, 1997).

The harms and costs associated with cannabis prohibition

While cannabis use can be harmful, so too can the systems which aim to restrict cannabis use. There is considerable evidence of organised crime involvement in large scale cannabis production and distribution in Australia (Australian Bureau of Criminal Intelligence, 1998, 1999) which brings with it considerable additional risks to the wider community (Australian Bureau of Criminal Intelligence, 1998; Mendez, 1999; Peace, 1999). Furthermore, law enforcement operations targeted at organised crime groups have not had any noticeable impact on the operation on the cannabis market as a whole, with little evidence of any reduced availability of cannabis (Australian Bureau of Criminal Intelligence, 1998). The financial costs of police processing and court costs associated with prosecuting minor cannabis offenders under a total prohibition approach are considerable (Alcohol and Drug Council of Australia, 1993; Australian Bureau of Criminal Intelligence, 1998, 1999; Brooks, Stathard, Moss, Christie & Ali, 1999; Criminal Justice Commission, 1994).

The widespread use of illicit drugs in the community and the existence of the substantial illicit market which aims to fill the demand for these drugs brings police into close contact with players in the illicit drug trade. Recent investigations into police corruption in Australia have uncovered examples of cannabis-related police corruption which involve large amounts of cannabis and money (Criminal Justice Commission, 1997; New South Wales, Royal Commission into the New South Wales Police Service, 1997; Select Committee into the Misuse of Drugs Act, 1981; 1997).

There is evidence that those who receive a criminal conviction for a minor cannabis offence can pay a considerable social cost as a result (Erickson, 1980; Erickson & Murray, 1986; LeDain, 1972; Lenton, Bennett & Heale, 1999; Lenton, Christie, Humeniuk, Brooks, Bennett & Heale, 1999. Many believe that this cost may be out of proportion to the seriousness of the offence (Christie, 1991; LeDain, 1972).

Data from a small number of studies (Lenton, Bennett & Heale, 1999; Loxley, 1993; Maddox & Williams, 1998) supports the observation that when cannabis users go to the existing illicit market to buy their cannabis, they are exposed to a range of other potentially more harmful illicit drugs.

Harm reduction

Since the mid 1980s ‘harm reduction’, or ‘harm minimisation’, has been the official aim of Australia’s national response to drug use (Ministerial Council on Drug Strategy, 1998). Harm reduction is a pragmatic approach to dealing with drug-related harm which accepts that drug use is a part of life, but does not condone drug use. The main goal of a harm reduction approach is to reduce drug-related *harm*, rather than drug *use* per se (Heather, 1995; Lenton & Midford, 1996). Harm reduction asserts that strategies should be available to help all users to reduce drug-related harm to themselves, their families and the general community, whether or not they are trying to reduce or stop their drug use.

Harm reduction does not dictate a specific legislative control system for drugs, such as *legalisation*. Rather, it asks which policies are the most effective at reducing specific drug-related harm (Lenton & Single, 1998). For example, new approaches to law enforcement based on harm reduction aim to re-shape, rather than totally suppress, illicit drug distribution and consumption, with the overarching objective to ensure that laws are enforced in ways that keep health, welfare and other harms, as well as drug-related crime, to a minimum (Hellawell, 1995; Sutton & James, 1996, 1997).

Contrary to claims that harm reduction approaches ‘send mixed messages’ there is evidence that the general public understand and support harm reduction measures (Lenton & Ovenden, 1996; Lenton & Phillips, 1997). Studies of the effect of implementing harm reduction strategies, such as provision of needles to drug injectors

(Lurie, Reingold, Bowser *et al.*, 1993; Paone, Des Jarlais, Gangloff, Milliken & Friedman, 1995) and removal of criminal sanctions for cannabis possession (Donnelly, Hall & Christie, 1995, 1999; Single, 1989; MacCoun & Reuter, 1997), indicate that these measures have not lead to increased levels of drug use in the community

The harm reduction approach can inform the consideration of legislative options for cannabis use and supply by: putting the emphasis on reduction of harm rather than use per se; encouraging consideration of how the system will impact on those who continue to use the drug as well as non-users; and, requiring the impacts of such a system be carefully monitored.

Legislative models for cannabis

The primary aim of any cannabis policy should be not only to minimise the harm which results from cannabis use itself (essentially health and safety hazards), but also to minimise the harms and social costs (including enforcement costs) that result from attempts to control use (Single, 1998). According to McDonald *et al.* (1994) the main legislative models for cannabis are:

- *Total Prohibition:* All activity associated with the possession, use, growth, sale or supply of cannabis is considered criminal. Such a legislative system currently operates in Victoria, although since September 1998 cautions have been given for first and second offences (Victoria Police Strategic Development Department, 1998).
- *Legislative Prohibition with an Expediency Principle:* Cannabis related activities are illegal. However, cases involving the possession or use of small quantities are not investigated or prosecuted by police. Examples of this system operate in Denmark and the Netherlands.
- *Prohibition with Civil Penalties:* Cannabis related activities are illegal, but criminal penalties do not apply. Instead, a civil penalty such as a fine is administered. Activities relating to large scale cultivation, sale or supply of cannabis remain subject to criminal penalties. Systems based on this model operate in South Australia, the Australian Capital Territory, the Northern Territory and ten

states in the USA.

- *Partial Prohibition:* Personal use activities are not illegal, while cultivation, sale and supply of commercial quantities of cannabis are prohibited. Examples of this model currently apply in Colombia, Spain and Switzerland. Furthermore, the legislative model recommended in the report of the Premier's Drug Advisory Council (1996) most closely resembled partial prohibition.
- *Regulation:* All cultivation, sale and supply of cannabis would be to some extent controlled by government regulation. Activity outside the regulated market remains illegal. In Australia it is this system that applies to currently licit drugs such as tobacco and alcohol. This system does not apply to cannabis anywhere in the world, although the retail sale of cannabis through *coffeeshops* in the Netherlands is subject to regulation.
- *Free Availability:* No legislative or regulatory restriction would apply to the cultivation, sale, supply, possession or use of cannabis. It should be noted that there are very few commodities for which a system of free availability applies.

Under some legislative models, such as *total prohibition*, diversion schemes are put in place to reduce individual and social harms of applying the criminal justice system to drug use. This may involve either diversion of drug offenders *from* the criminal justice system or diversion *to* drug treatment (or indeed both). Many such schemes are in place in various jurisdictions in Australia and elsewhere (McDonald *et al.*, 1994), the latest addition being the Drug Court (Inciardi, McBride & Rivers, 1996).

International experience of legislative models for cannabis

The international experience of global cannabis prohibition shows signs of increased national modification and experimentation with alternative models being adopted within this overall framework. While some countries such as Canada, Germany (although some states moving to decriminalise), Hong Kong Jamaica, Poland USA (at federal level, but decriminalisation existed in 10 states since the 1970's) have maintained a strict approach, others have introduced partial prohibition (Columbia, Switzerland), and some have tried various schemes of prohibition with expediency principle (Denmark, The Netherlands), or quasi-regulated availability (Spain). It is

evident that patterns of use are affected by many more factors than the legal regime, and no clear trends have been demonstrated in relation to any fluctuations in legislation, either nationally or internationally.

Australia is currently signatory to three main international drug treaties; the 1961 Single Convention, the 1971 Convention on Psychotropic Substances and the 1988 United Nations Convention (the Vienna Convention). The key feature of the treaties is that signatories are obliged to establish control systems that prohibit the availability of controlled drugs, including cannabis, except for scientific or medical use. There are varying interpretations as to the extent to which the treaties require cannabis use or possession to be sanctioned. However, it is clear that non-incarcerative, and indeed non-criminal sanctions, do not violate treaty obligations (INCB, 1992; Krajewski, 1999; McDonald *et al.*, 1994). An additional element of the 1971 Convention on Psychotropic Substances is that treatment and rehabilitation are acceptable alternatives to punishment for cannabis related offences.

Australian experience of legislative models for cannabis

Three Australian states and territories have in place a *prohibition with civil penalties* model for minor cannabis offences. South Australia (in 1987), the Australian Capital Territory (in 1992) and the Northern Territory (in 1996) have each adopted infringement notice systems whereby minor cannabis offences are dealt with by an 'on the spot' fine. The schemes differ in terms of the specific details of the offences, the levels of the fines imposed, the consequences of failing to pay within the specified period, and other procedural factors. However, what they share in common is that a criminal conviction is not recorded if the fine is paid within the prescribed period.

In 1998 Victoria and Tasmania introduced cautioning systems for cannabis use, and in WA a trial of a limited cannabis cautioning scheme began in two police districts. Again there are differences between the intent and operation of the schemes. The laws applying to minor cannabis offences in Australia are summarised in the table below.

Lowest scale offence for possession of cannabis: Australian jurisdictions February 1999

Juris-diction	Quantity Threshold	Criminal Offence	Maximum Penalty
STRICT PROHIBITION			
WA	<25 plants <100 grams cannabis <20 grams cannabis resin <80 joints	Yes	\$2,000 fine or 2 years imp. Or both. (implements \$3,000 fine or 3 years imp. Or both) Trial of cautioning + education session for 1 st offenders (from Oct 1998)
NSW	Cannabis leaf <200 grams	Yes	2 years imp. Or \$2,000 fine or both
QLD	<500 grams, or where plants, the aggregate weight of the plants is <500 grams, 100 plants	Yes	15 years imp. And/or \$300,000 fine if dealt with on indictment; 2 years imprisonment and/or \$6,000 fine if dealt with summarily
PROHIBITION WITH CIVIL PENALTIES (INFRINGEMENT NOTICE SYSTEMS)			
SA	(since 1987) <100 grams of cannabis <5 grams cannabis resin ≤ 3 plants ⁽¹⁾	No, if expiated within 60days	Expiation amount - \$50 to \$150 fine . (over 18years of age only) Failure to expiate almost always results in automatic conviction.
ACT	(since 1992) Not >25 grams or 5 plants	No, if expiated within 1 month	\$100 fine, if expiated (applies to juveniles & adults) Failure to expiate doesn't necessarily result in cannabis conviction
NT	(1995 amendments) Cannabis - <50g Cannabis resin – 10g ≤ 2 plants	No, if paid in 28 days	\$200 fine, if infringement notice paid (over 18years of age only) Failure to expiate is dealt with as fine default rather than cannabis offence
PROHIBITION WITH CAUTIONING			
VIC ⁽²⁾	(from September 1998) (cautioning state-wide) <50 grams of cannabis	Not for those cautioned	Up to two formal cautions (over 17years of age only)
TAS	(since July 1998) <50 grams of cannabis leaf	Not for cautioned first offenders	Formal cautioning for first offenders

(1) Reduced from 10 plants in May 1999.

(2) An adjourned bond option for first offenders has also been maintained in Victoria.

The Victorian situation

In Victoria, as elsewhere in Australia, cannabis offences account for a significant amount of criminal justice system resources. According to unpublished data from the Strategic Development Department, Victoria Police, persons charged with cannabis offences in Victoria account for about 10% of all persons charged for any offence, and about 69% of persons charged with a drug offence. During 1996 and 1997 there were approximately 6000 persons whose most serious cannabis offence was a possession/use offence per year. These persons comprised about 65% of all persons charged with cannabis offences (Australian Bureau of Criminal Intelligence, 1999). Juveniles accounted for fewer (7%) of cannabis charges than they did for all (drug and non-drug) charges (16%) (unpublished data, Strategic Development Department, Victoria Police).

The primary legislation concerning the prohibited status of cannabis use in Victoria is the *Drugs, Poisons and Controlled Substances Act 1981*, Section 3.8. The use or attempted use of cannabis is a summary offence (with a maximum penalty of \$500) and penalties for cannabis use are less than those for other specified drugs of dependence. Possession and cultivation of cannabis are indictable offences. Possession of less than 50 grams of cannabis not for trafficking (for personal use) carries a maximum penalty of \$500. Possession of 50 grams or more of cannabis not for trafficking carries a maximum penalty of \$3000, and/or 1 year imprisonment. Cultivation of cannabis, not for trafficking carries a maximum penalty of \$2000, and/or 1 year imprisonment. Under the Act, possession of 250 grams of cannabis and cultivation of 10 plants are defined as 'a trafficable quantity' and are each treated as *prima facie* evidence of trafficking. The possession of paraphernalia does not constitute an offence in the state of Victoria. Under the Act, first time cannabis offenders appearing in court for a possession or use offence may be given a bond. If the conditions of the bond are complied with no conviction is recorded.

Under the Victorian cannabis cautioning scheme police are able to issue a caution to adults detected in possession of/using less than 50 grams of cannabis. Individuals with prior drug offences are excluded, the person has to admit the offence and consent to being cautioned, and a caution cannot be issued to the same person on more than two occasions. After a six month trial in one police district the cannabis cautioning scheme was extended statewide from September 1998.

Research on the CEN scheme of South Australia

Being the longest running example of alternative models of cannabis regulation in Australia, the South Australian Cannabis Expiation Notice System is the most extensively evaluated in the country (Ali, Christie, Lenton, *et al.*, 1999; Christie, 1991; Christie, & Ali, 1995; Sarre, Sutton & Pulsford, 1989; Sutton & Sarre, 1992). Indeed, the evaluations of the South Australian system that have been conducted since its inception are far more comprehensive than any evaluation of cannabis regulation that has been conducted world-wide.

The number of Cannabis Expiation Notices (CENs) issued in South Australia has increased from 6,200 in 1987/88 to 16,321 in 1995/96 (Christie, 1999). It seems that this is more likely to be due to changes in police practices and the administrative ease with which the notices can be issued, rather than an escalation in the prevalence of cannabis use (Christie & Ali, 1995; Christie, 1999). Most CENs are issued for possession of less than 25 grams of cannabis and half of all CENs issued were received by people in the 18 to 24 year old age group (Christie, 1999). According to Christie (1999) the average value of CENs issued was about \$70 and only about 45% of CENs are expiated. This could be due to financial hardship, particularly for younger offenders and those who may have received multiple CENs over time (Christie, 1999). About 92% of the unpaid CENs forwarded for prosecution resulted in a conviction (Christie, 1999). Research on South Australian cannabis users who had expiated found that most did so to avoid court and a criminal record (Humeniuk, Brooks, Christie, *et al.*, 1999). Most who failed to expiate reported that it was because of financial difficulties and many underestimated the amount they would ultimately have to pay. Three quarters of the non-expiators were not aware that they would get a criminal record if they did not expiate (Humeniuk, Brooks, Christie, *et al.*, 1999). Recent changes to the scheme have been implemented to improve the expiation rate (Christie, 1999).

Research comparing the social impacts of receiving a CEN under the South Australian system, with those for receiving a criminal conviction under the system of strict prohibition which operates in Western Australia, found similarities between both groups of offenders (Lenton, Christie, Humeniuk, *et al.*, 1999). However, large differences were evident in terms of the adverse impacts of the respective legal sanctions. The majority of both the South Australian CEN group and the Western

Australian convicted groups saw themselves as largely law abiding and had respect for the role of police as law enforcers and the rule of law in general. Yet neither the CEN nor the cannabis conviction appeared to have had much impact on subsequent cannabis use. For example, 91% of the SA expiator group and 71% of the WA group said that their cannabis use was not at all affected by their apprehension one month after this. The vast majority of each group said that if they were caught again they would not stop using the drug. However, the adverse social consequences of a cannabis conviction far outweighed those of receiving an expiation notice. A significantly higher proportion of the WA sample, compared to the SA sample, reported adverse social consequences of being apprehended for a cannabis offence. These included problems with employment, further involvement with the criminal justice system, as well as accommodation and relationship problems. Although the study failed to find differences in the impacts on capacity to travel overseas, this was likely due to methodological limitations (Lenton, Christie, Humeniuk, *et al.*, 1999).

Over the 10 year period from 1985 there has been an increase nationally in self-reported lifetime (ie. ever), cannabis use with a greater degree of increase in South Australia than in the average of the other Australian states and territories (Donnelly, Hall & Christie, 1999). However, because jurisdictions which had maintained strict cannabis prohibition recorded similar rates of increase to South Australia the South Australian increase in lifetime use was unlikely to be due to the civil penalties system which operates in that state. Even if South Australians were slightly more likely to have ever tried cannabis than those in other states, this did not result in higher rates of regular use in that state (Ali, Christie, Lenton *et al.*, 1999).

A survey of the South Australian public found there was some confusion about the legal status of expiable offences. For example, 53% of the sample believed that possession of 3 cannabis plants was legal. On the question of the future of the CEN scheme 43% were in favour of the status quo, 14% were in favour of making it more lenient and 38% favoured making it stricter (Heale, Hawks & Lenton, 1999).

A cost analysis of the CEN scheme conducted by Brooks, Stathard, Moss, Christie and Ali (1999) concluded that even with a relatively low rate of expiation, the scheme had a much greater potential for cost savings to the state than a prohibition scheme for minor cannabis offenders. An intensive interview study of law enforcement and criminal justice personnel working in South Australia found that senior officials in the

South Australian Police and other departments generally agreed that the CEN scheme should remain in place, as it provided an efficient way of dealing with minor cannabis offences and had advantages for offenders by avoiding a criminal conviction. However, some senior police believed that the 10 plant limit was being exploited by commercial cannabis cultivation enterprises spreading their operations across smaller plantations (Sutton & McMillan, 1999).

No differences were found in the self-reported attitudes of employers in both SA and WA towards employing people with prior cannabis offences, with both groups reporting that they did not discriminate against such offenders (Allsop, Ask, Christie, Phillips & Davies, 1999). This finding was somewhat at odds with the reported experiences of cannabis offenders in the two states (Lenton, Christie, Humeniuk, *et al.*, 1999).

Deterrence effects, impacts on youth and gateway theories

Deterrence effects

When publicly responding to calls for reform of cannabis and other drug laws some policy makers voice the notion that at all costs we need to avoid ‘giving the wrong message’, the argument being that reducing or removing penalties will in some way condone use and lead to an increased use of the drug. There is also a belief that criminal penalties serve to dissuade those so convicted from further use of the drug. However, research evidence calls into doubt both these assertions.

Studies of the 11 American states which decriminalised cannabis use (Erickson, 1993; Single, 1989) and of South Australia and the Australian Capital Territory (Commonwealth Department of Health and Family Services, 1996; Donnelly, Hall & Christie, 1995, 1999), which have also removed criminal penalties for the possession and use of cannabis, found that the prevalence of current use had not disproportionately increased in these jurisdictions as a result of the change in the legal status of the drug. Conversely, jurisdictions which have retained total prohibition have not been able to deter a substantial proportion of residents from using cannabis (e.g. Lenton, Ferrante & Loh, 1996). Recent research on convicted cannabis users in Western Australia found that the majority did not change their rate of cannabis use as

a consequence of their legal involvement (Lenton, Bennett & Heale, 1999). However, the criminal conviction had a real and detrimental effect on people's lives in areas such as employment and further involvement with the police. Most of the convicted cannabis users studied had a respect for the law in general, but disagreed with the laws pertaining to cannabis use (Lenton, Bennett & Heale, 1999). A West Australian public survey found 72% of the sample thought the penalty for personal use should be "like those for speeding in a motor vehicle, they should get a fine but not a criminal record" (Lenton & Ovenden, 1996).

Impacts on youth

Analysis of data from national household surveys suggested that there had been an Australia-wide increase in the rates of lifetime cannabis use among those aged 14 to 29 years (Donnelly, Hall & Christie, 1999). However, evaluation of the CEN system found that introduction of a civil penalties scheme in South Australia did not in itself appear to have increased cannabis use by secondary school students.

'Gateway' theories

Regarding the evidence pertaining to the so called 'gateway' theories, although there is undoubtedly a strong statistical relationship between cannabis use and the use of other drugs, most cannabis users do not progress to use other drugs (Cohen & Sas, 1998; Donnelly & Hall, 1994; Kandel *et al.*, 1974; LeDain, 1972; MacCoun, 1998; Single *et al.*, 1974). Licit drugs such as alcohol and tobacco relate just as strongly as cannabis to other illicit drug use, and trends in cannabis do not always relate to trends regarding other illicit drugs.

Heavy cannabis use may be a marker for other drug use but it does not follow that it therefore *caused* the other drug use. More plausibly, either: (1) heavy cannabis users and users of 'hard drugs' shared underlying personal or social vulnerability factors (eg. rebelliousness (Torabi, Bailey & Majd-jabbari, 1993), risk taking and stimulus seeking (Lynskey & Hall, 1998;), poor economic prospects (Schaefer Commission, Marihuana, 1972; LeDain, 1973) etc.); and/or (2) frequent involvement in the cannabis market exposed heavy cannabis users to many opportunities to use other drugs (Blackwell & Erickson, 1988; Goode, 1971; Johnson, 1973). Therefore,

interventions offered to those at risk should not simply aim at avoiding or stopping cannabis use but should address a range of possible underlying factors.

Considering a new model for the regulation of cannabis possession, use and supply in Victoria

Comparative assessment of the most viable regulatory options

Here we summarise the likely advantages and disadvantages of those models which we regard as most viable in the Australian context after taking into account the impact of the International Treaties.

It does not appear to us to be practical to recommend an option which is in breach of generally accepted interpretations of the international treaties. While the review of the treaties and the situation in other countries has shown that it may be possible to have a *de facto* system of regulation, such as that which exists in the Netherlands, whereby laws criminalising cannabis are retained but not enforced, it is clear that there must be a considerable amount of political will to support such a system in the face of pressure from within and without. Unless there is a recognised level of political and public support for the view that domestic drug policy should not be dictated by international treaties obligations, any proposed model should clearly be compatible with international treaty obligations. The *partial prohibition* approach which does not treat possession of a personal use amount as an offence does not meet this criterion. However, the *prohibition with civil penalties* approach, which to date applies in three Australian states and territories, has been shown to be consistent with the international treaties.

The models compared here are *total prohibition*, *prohibition with an expediency principle*, and *prohibition with civil penalties*. Strengths and weaknesses are organised into those which are based on research or other evidence and those which are conceptual, theoretical or likely, but where there is no direct evidence. The comparison presented is a further development of that offered by McDonald *et al.* (1994).

Total prohibition

Advantages

Evidence based

- The status quo in many jurisdictions. Most jurisdictions around the world apply a total prohibition legislative and regulatory model to cannabis and other drugs. It could be argued that costs and benefits of such a system are well understood and that any change to the system is too risky. However, the recent work on cannabis law in Australia (Ali, Christie, Lenton *et al.*, 1999) shows that until recently the costs of the system have not been well monitored, and the benefits of the system may not be as great as some believe.
- Obviously consistent with the spirit and letter of the international conventions. There is no doubt that the total prohibition approach characterised by criminal penalties and strict enforcement is well within even the most conservative interpretation of the international drug conventions (McDonald *et al.*, 1994; Krajewski, 1999).

Conceptual or theoretical

- At a macro level gives a clear and unambiguous message of opposition to cannabis use. Some conservative policy makers and other members of the community justify the maintenance of cannabis prohibition as they claim it gives a clear signal that use of the drug is not condoned. However, research questions the extent to which this 'message' prevents cannabis use in the general community (Lenton, 1998).

Disadvantages

Evidence based

- A number of studies have found there is little evidence that total prohibition has had a general deterrence effect for a great many members of the general population (Erickson, 1993; Single, 1989; Donnelly, Hall & Christie, 1999).

This appears to be because community support for applying criminal penalties to minor cannabis offences is low (Lenton & Ovenden, 1996), and the probability of being apprehended for these offences is much less than that generally considered likely to have an effective deterrent effect (Erickson, 1993; Lenton, Ferrante & Loh, 1996).

- There is some research evidence that a conviction for a minor cannabis offence does not deter the vast majority of those so convicted from further use of the drug. Cannabis use was continued because users enjoyed it, didn't see it as a crime, and disagreed with the laws which prohibited it (Lenton, Bennett & Heale, 1999).
- There is some research evidence that a conviction for a minor cannabis offence can have a real and detrimental impact on subsequent employment, further involvement with the criminal justice system, relationships and accommodation for a significant minority of those so convicted (Lenton, Bennett & Heale, 1999). There is suggestive research evidence and good procedural evidence that a conviction can also adversely effect one's capacity to travel to some countries including the USA and Canada (Lenton, Bennett & Heale, 1999).
- There is research evidence that a large proportion of the general public believe that many people in the community use cannabis without experiencing serious problems due to its use, and that the court system is overburdened with minor cannabis offences (Lenton & Ovenden, 1996).

Conceptual or theoretical

- Total prohibition options rarely recognise the need to treat drugs with different harm profiles differently. As such the opportunity to selectively apply the law on harm reduction grounds and give different signals to the community about the acceptability of various drugs is lost (van Vliet, 1988, cited in McDonald *et al.*, 1994).
- In the application of total prohibition options, moral arguments are often confused with arguments about the consequences of drug use, which has contributed to the development of unachievable policy goals and a failure to consider the harms caused by the system that enforces them.

- The total prohibition of cannabis is seen as contradictory to the treatment of the legal drugs - alcohol and tobacco - which are recognised by many as being at least as harmful as cannabis (Hall, Solowij & Lemon, 1994). While there are clearly lessons to be learned from mistakes that have been made in regulating these legal recreational drugs there are opportunities for better controls on regulating cannabis supply and raising revenue from taxing its production, distribution and purchase for consumption which would be possible in a non-prohibitionist system. Revenue can also be made from infringement notices paid under a *prohibition with civil penalties* model (Brooks *et al.*, 1999). It would be possible to re-direct revenue raised into treatment programs for cannabis dependence and other drug problems.

Legislative prohibition with an expediency principle

Advantages

Evidence based

- There is evidence that a system of cannabis supply can be established which largely separates the cannabis market from that for other illicit and potentially more harmful substances (McDonald *et al.*, 1994).
- While the system operating in the Netherlands is in apparent conflict with the spirit of international conventions which expressly prohibit commercial sale and supply of cannabis, the Dutch do in fact maintain legislative prohibition. This is an example of a pragmatic approach which permits discretion about whether or not and how such laws are enforced at a local level. The system allows drug policy implementation to be responsive to local community attitudes.
- The Dutch system has made considerable savings in law enforcement and criminal justice system budgets by not processing large numbers of minor cannabis offenders. The distribution system is also largely free from the violence evident in criminal supply networks which operate in other countries where the legislative prohibition on cannabis is enforced (McDonald *et al.*, 1994).

Conceptual or theoretical

- Recognises that there is no monolithic ‘drug problem’ but rather a series of complex and interrelated social problems to which law enforcement and the criminal law cannot be a complete solution.
- Commenting on the Netherlands experience McDonald *et al.* (1994) note that the effect of separating cannabis from other drugs has had the effect of making drug problems more manageable.
- The Netherlands experience has shown that it is possible to ‘normalise’ and ‘culturally integrate’ cannabis use, recognising that the use of some intoxicants is natural to all human societies and the goal of drug policy ought to be to reduce the problems associated with it rather than the unrealistic goal of eradication of all cannabis and other drug use (McDonald *et al.*, 1994).
- Cohen (1988) has suggested that in the Netherlands the knowledge of how to control one’s cannabis use has been inconspicuously integrated into youth culture because the development of drug use rules was not pushed from the mainstream into deviant subcultures. Thus, similar parental and social controls to those which shape responsible drinking practices apply to the use of cannabis.

Disadvantages

Evidence based

- In the Netherlands there is evidence suggesting that the growth in cannabis *coffeeshops*, which has been termed ‘defacto legalisation’, may have resulted in a growth in cannabis use among adolescents, but that this growth has put the rates of cannabis use no higher than that in the USA with its more punitive legislative regime towards cannabis (MacCoun & Reuter, 1997).
- The Netherlands has experienced international pressure from the European Union, international organisations (primarily the United Nations Drug Control Program), the USA, some of its European neighbours, and other countries which adopt a prohibitionist approach to cannabis, to change its drug policy (Lemmens & Garretsen, 1998; Reinerman, 1998). The pressure has been justified on the grounds that the Netherlands policy ‘undermines domestic drug policy’ (in the USA), stimulates across border drug tourism, and undermines international

collaborative efforts to reduce drug production and trafficking. It seems clear that any nation adopting a system of cannabis control which is regarded as permissive or threatening by its neighbours or powerful members of the international community will need to have considerable resolve and be clear about the domestic benefits of such a policy to sustain resistance to such pressure. The Netherlands has shown that this is possible.

- The Dutch experience shows that if the control of the wholesale supply of cannabis to retailers is not managed within a legislative or explicit regulatory structure then this causes problems for those trying to run legitimate cannabis supply businesses and makes government taxation of this supply problematic (Silver, 1998, unpublished).

Conceptual or theoretical

- The Dutch approach of formalising inconsistency between the provisions of legislation and its implementation could be seen by some as conveying confusing messages to the community. This argument would suggest that it is preferable for legislation and policy to be aligned so that both would either permit or proscribe the use of cannabis in certain circumstances (McDonald *et al.*, 1994).

Prohibition with civil penalties

Advantages

Evidence based

- There is evidence that those who receive a criminal conviction for a minor cannabis offence can pay a considerable social cost as a result (Erickson, 1980; Erickson & Murray, 1986; LeDain, 1972; Lenton, Bennett & Heale, 1999; Lenton, Christie, Humeniuk, Brooks, Bennett & Heale, 1999. Many believe that this cost may be out of proportion to the seriousness of the offence (Christie, 1991; LeDain, 1972). The adverse social impacts for those apprehended for a minor cannabis offence under an infringement notice system with civil penalties have been shown

to be significantly less than those under strict cannabis prohibition with criminal penalties (Lenton, Christie, Humeniuk, *et al.*, 1999).

- Research in the USA (Erickson, 1993; Single, 1989) and Australia (Commonwealth Department of Health and Family Services, 1996; Donnelly, Hall & Christie, 1995, 1999) which has compared prevalence of cannabis use in the general population between states with total prohibition of cannabis and those which have introduced prohibition with civil penalties schemes shows that removal of criminal penalties for minor cannabis offences has not resulted in wider cannabis use.
- The financial costs of police processing and court costs associated with prosecuting minor cannabis offenders under a total prohibition approach are considerable (Alcohol and Drug Council of Australia, 1993; Australian Bureau of Criminal Intelligence, 1998, 1999; Brooks, Stathard, Moss, Christie & Ali, 1999; Criminal Justice Commission, 1994). Introduction of infringement notice schemes for minor cannabis offences has been shown to result in significant cost savings (Aldrich & Mikuriya, 1988; Brooks, Stathard, Moss, Christie & Ali, 1999; Criminal Justice Commission, 1994). The police resources which are freed up through the introduction of an infringement notice approach can be targeted at major drug traffickers and other serious crimes.
- Australian studies have found there are high levels of public support for a civil penalty approach for minor cannabis offences (Bowman & Sanson-Fisher, 1994; Heale, Hawks & Lenton, 1999; Lenton & Ovenden, 1996)

Conceptual or theoretical

- While research shows that many in the community believe the imposition of criminal sanctions for a minor cannabis offences is out of proportion to the seriousness of the crime (Lenton & Ovenden, 1996) , the civil penalty approach allows for fines to be set at a level commensurate with the offence while maintaining the illegality of the act.
- The use of infringement notices provides an opportunity to present other options such as education, assessment or treatment as part of an expiation system. Formal and informal cautioning schemes can also be integrated within a civil penalties

approach.

- The use of civil penalties schemes provides an opportunity to structure the cannabis market so that a greater proportion of the cannabis which is consumed is supplied by small-scale user growers, rather than by large scale commercial suppliers with other criminal associations (Sutton, in press).
- The Australian experience shows that the civil penalties approach is not in contravention of Australia's international treaty obligations.
- Maintaining a legislative prohibition of cannabis use, albeit one with civil penalties, does not equate with 'legalisation' of cannabis. Public attitude surveys in Australia have shown that the vast majority of the public are against making cannabis use legal (Bowman & Sanson-Fisher, 1994; Heale, Hawks & Lenton, 1999; Lenton & Ovenden, 1996). Although the recent data from South Australia would suggest that a comprehensive public education campaign may be needed to clarify the legal status of cannabis use under such a civil penalties system.

Disadvantages

Evidence based

- Research on the South Australian CEN scheme has found evidence of significant net-widening in that since its inception, there has been approximately a three-fold increase in the number of CENs issued (Christie, 1999; Christie & Ali, 1995). This appears to be due to police practices and the administrative ease with which the notices can be issued (Christie & Ali, 1995; Christie, 1999). It is possible that under the SA system, as police do not have discretion as to whether they can issue a CEN, many offences which may have been dealt with by 'informal caution' or a 'warning' under the pre CEN system, now result in an infringement notice being issued. A scheme which allows informal cautions and incorporates formal cautioning may reduce the likelihood of significant net-widening.
- There is evidence from South Australia that those of lower socio-economic status were more likely to be represented among those issued with CENs and those who were prosecuted for failing to pay their fine (Sutton & Sarre, 1992). It has been suggested that this could be improved by measures specified below.
- Only about 45% of CENs issued in South Australia are expiated (Christie, 1999).

This could be due to financial hardship, particularly for younger offenders and those who may have received multiple CENs over time. Also, as it may be difficult for police to verify proof of identity at the time a CEN is issued to an offender, some CEN matters are lost to follow-up. The rate of expiation of CEN offences may improve following recent changes including increasing the number of payment options (eg. instalment payments, community service). In addition, the provision of clearer and more detailed information on the consequences of failure to pay expiation fees (especially of criminal conviction) may help to improve expiation rates (Ali, Christie, Lenton, *et al.*, 1999).

- In South Australia the cost to the system of a CEN being issued and cleared increased greatly when the fine was not expiated. It increased just under three-fold when matters remained unpaid and had to be prosecuted, more than eight-fold when cleared by community service order, and more than eighteen-fold when cleared by imprisonment (Brooks, Stathard, Moss, *et al.*, 1999). Improvements in cost savings as a result of introducing prohibition with civil penalties can be made if the rate of expiations is kept high by strategies such as those discussed above (Ali, Christie, Lenton, *et al.*, 1999).
- Senior police in South Australia believed there was opportunity for the 10 plant limit to be exploited by commercial cannabis cultivation enterprises spreading their operations across smaller plantations of 10 plants or fewer, while maximising the yields through sophisticated cultivation techniques (Sutton & McMillan, 1999). As a result the maximum number of plants expiable under the CEN scheme has recently been reduced from ten to three. However, alternative strategies such as police repeatedly issue CENs and seizing plants and growing equipment could also be used to dissuade such operations (Sutton & McMillan, 1999).

Conceptual or theoretical

- It has been noted that the expiation notice system may put pressure on some offenders who claim to be not guilty, to pay the fine, thus accepting guilt, rather than contest the charge and run the risk of appearing in court acquiring associated costs, and potentially receiving a criminal conviction if found guilty. One solution noted in McDonald *et al.* (1994) is for the law to be amended so that no conviction

**The regulation of cannabis possession, use and supply
is recorded if the person contesting the CEN is found guilty.**

Identification of a recommended model for the regulation of cannabis possession, use and supply in Victoria

Principles underlying the recommended model

In this section we offer, on the basis of our review of the relevant research literature and conceptual argument, the underlying principles upon which we believe a preferred option should rest.

1. The recognition that, in general terms, drugs differ in their capacity to harm.

While it is not possible to exactly arrange drugs along a quantitative spectrum of harm, it is none-the-less possible to group drugs according to their approximate capacity to do harm to the user. Systems designed to regulate drug use should reflect this and apply penalties accordingly. There needs to be some logical and defensible relationship between the harm associated with a particular drug and the penalties applied to its use. While cannabis is not a harm free drug, it is much less harmful than many other currently illicit drugs, and indeed some which are licit.

At the simplest level, a distinction can be made between harm which is primarily borne by the individual user and harm which is primarily borne by society. In reality, even this distinction is difficult to sustain as an absolute in a society in which the cost of individual self harm is shared amongst the citizens whose taxes support the general health and welfare system. However, it is nonetheless a useful distinction when discussing the appropriateness of penalties designed to modify personal drug use and its associated harms. In this connection it would appear valid to argue that where the major costs of an individual's drug use are borne by themselves (eg. health costs, dependency) then the penalties should be less than when the costs of their use can have a large and profound effect on the well being of others (eg. driving a vehicle under while grossly impaired by cannabis). It is also important to note that in addition to the harms that users can experience as a direct result of their drug use, there are also a range of harms experienced by users as a result of the application of regulatory and legal systems designed to control their use.

2. *The preferred option should not impose a life-long penalty for a simple offence of personal use.*

This requirement is a variant of the view that the penalty ‘should fit the crime’. Someone found to be using cannabis should not have a life-long penalty imposed on them, for example, a criminal record, with no possibility of that penalty being expunged whatever their subsequent drug use. However, while the occasional personal use of cannabis may be judged a minor threat on the spectrum of harm, its combination with alcohol and driving, or its use when operating machinery are properly regarded as endangering others and therefore deserving of more severe penalties than is use per se.

3. *A legislative system should not encourage cannabis use or patterns of use that increase harm.*

While the deterrent impact of legislative systems are difficult to demonstrate, penalties should certainly be structured so that they do not actually encourage use or patterns of use which may increase harm. The argument as to whether systems can be shown to deter use is complex. Obviously for those who use cannabis the prospect of a penalty has not, by definition, stopped them from using, although it might have affected the way they use. On the other hand, for some of those not using cannabis, the penalty may have had a deterrent effect. Research on the prevalence of cannabis use in the general community suggests, however, that the removal of criminal penalties for cannabis use has not affected the proportion of the general community who have recently used the drug.

Whatever deterrent effect a legislative system may or may not have had in a particular case, it should not serve to encourage use in the sense of leading to more widespread use, more intensive use, more harmful use, or lead to use of other, more harmful drugs.

4. *The option should facilitate, rather than hinder, preventative education and treatment.*

A legislative option which serves to curtail discussion of any aspect of the use other than its illegality denies users the opportunity to render their use safer with obvious benefits not only to themselves, but society in general. Having the means and

knowledge necessary to reduce the likelihood of harm should not be denied, whatever the illegality of that use. While in law there are no barriers to discussing strategies to reduce harm under prohibitionist models, in some places, particularly for example in schools, it is seen as inconsistent by some administrators and parents groups to be discussing safer ways of using drugs, the use of which is deemed to be unlawful.

The right to receive treatment for one's drug-related problems should not be compromised by the criminal penalties which apply to drug use. The preferred option should not discourage users from seeking treatment for fear that in doing so they will be criminally prosecuted for their use.

5. *Any legislative option which does not criminalise personal use should make realistic provision for the non-criminal supply of the drug for that (personal) use.*

In so far as it has been shown that the so called 'gateway hypothesis' can in part be explained by the fact that cannabis users come in contact with other drugs when they purchase cannabis from illicit suppliers who are also dealing in other more dangerous drugs, it is clearly desirable that any option seeks, as far as is practicable, to separate the supply of cannabis from the supply of these other, more harmful drugs.

However, it is not enough for a legislative system which does not criminalise personal use of cannabis to assume demand can be met entirely by users growing their own cannabis. The system should be flexible enough not to criminalise low-level supply which is necessitated for any model other than *free availability* or *government regulation* to work in practice.

The preferred option should accordingly favour small scale production over large scale commercial production which may be used to fund other illegal activity or which itself is supported by other illegal activity. On the other hand, small scale production primarily by users, if not only for personal use and cost recovery, should not result in large scale profiteering.

6. *The preferred option should not operate in practice in a way which can be shown to be discriminatory.*

A system of fines, even one which allows the expiation of the offence should the fine be paid, discriminates against those that can not pay the fine and who may

subsequently be convicted of fine default. Provision needs to be made in any system for a penalty applied to illegal use to be 'worked off' in a variety of ways which are considered equitable, but which do not discriminate against particular categories of offenders, for example attending a cannabis education session for those who may be unable to pay a fine.

7. *The preferred option should be compatible with a generally accepted interpretation of Australia's obligations under the various international drug treaties.*

It does not appear to us to be practical to recommend an option which is in breach of generally accepted interpretations of the international treaties. While the review of the treaties and the situation in other countries has shown that it may be possible to have a de facto system of regulation, such as that which exists in the Netherlands, whereby laws criminalising cannabis are retained but not enforced, it is clear that there must be a considerable amount of political will to support such a system in the face of pressure from within and without. Unless there is a recognised level of political and public support for the view that domestic drug policy should not be dictated by international treaties obligations, any proposed model should clearly be compatible with international treaty obligations. The *partial prohibition* approach which does not treat possession of a personal use amount as an offence does not meet this criterion. However, the *prohibition with civil penalties* approach, which to date applies in three Australian states and territories, has been shown to be consistent with the international treaties.

8. *The preferred option, whether applied nationally, regionally or on a state-wide basis, should not act as a 'honey-pot' to the extent that it makes the system unworkable.*

Whether enacted on a national or regional basis, it is imperative that the preferred option not be compromised by attracting large numbers of non-resident users to that jurisdiction. The provision of more appropriate legislative controls, more accessible treatment options, and other desirable features of the preferred system may be jeopardised should that system encourage an influx of non-resident users and as a result lose the support of the general public.

9. The preferred option will need to be viewed as justifiable, workable and coherent.

While the preferred option should ideally be judged by all segments of society to be justifiable, workable and coherent, it is particularly important that it is supported by the bulk of the police forces appointed to enforce the system, the judiciary appointed to arbitrate it and the users who will be dealt with by it. The preferred model should incorporate adequate education about the laws, their intention and detail for all these groups. This should include education of the general public.

Of particular importance is the perceived coherence of the system. It should be seen in its *totality* as consistent in seeking certain objectives. It needs to be a system which educators can confidently espouse and which will be perceived as logical by users even if they contest the continuing illegality of use.

For the system to be workable it will require that the numbers dealt with do not overwhelm the system. Appropriate provisions should be built into it allowing less serious offences to be dealt with expeditiously. Opportunities should also exist for diversion from the court process when this is appropriate.

10. Whatever the behaviours that the preferred option aims to deter, there should be a perceived high probability of their detection.

The principle being espoused here is the same as that which underlines random breath testing for alcohol. For drivers to be deterred from drinking when proposing to drive, they must *expect* to be apprehended. All the evidence suggests that it is the perceived *probability* of being apprehended, not the *penalty* applied which acts as a deterrent. Evidence suggests that the risk of being apprehended for possession/use of cannabis is extremely low, particularly when the drug is being used in private. If, for example, smoking cannabis in the street was deemed a behaviour which ought to be discouraged, its visibility would render apprehension possible and therefore a law which prohibited smoking cannabis in the street could conceivably provide reasonable deterrence for that behaviour.

11. *The preferred option should be capable of being evaluated and subject to regular review and adjustment to increase the likelihood that it meets the goals which it was designed to achieve.*

The only meaningful test for any legislative system is how it works in practice in the setting in which it is applied. Therefore we believe that the preferred legislative option should be subject to a comprehensive independent evaluation designed prior to the legislative changes being implemented and commenced from their inception.

The recommended model

Having identified what we consider the evidence suggests are the elements of a preferred legislative option, we will now attempt to offer our preferred model. In doing so, we have proposed a model which is a variant of the *prohibition with civil penalties* approach as described above. The model is a variant in that it incorporates cautioning for first offenders, and because it aims to separate cannabis from other illicit drug markets by treating provision, as well as possession, of a *small quantity* of cannabis as expiable civil offences, rather than as criminal offences.

It is proposed that the cautioning and expiation provisions suggested below would apply to the offences of *possess cannabis*, *cultivate cannabis*, and *traffic cannabis* specified in the *Drugs, Poisons and Controlled Substances Act of 1981*. We recommend that the offence of *use cannabis* specified in the Act is abolished as the offences based on possession of a quantity of cannabis are more objective and, in the vast majority of situations, make charges based on use per se unnecessary.

1. *The option would provide for cautioning for first offenders.*

First offenders found in possession of an amount deemed to be a *small quantity* of cannabis would be issued with a formal caution. The cautioning notice would include information about the harms associated with cannabis, the legal provisions which apply to the drug and information about treatment services for people with cannabis related problems. Those cautioned will be told that the caution will be recorded and subsequent offences will result in a fine being imposed. At their discretion police will be able to informally warn first offenders rather than issue a formal caution.

A small quantity would be defined as not more than:

- 10 growing plants of which not more than 3 plants shall be mature (possess flowering heads or be more than 50 cm in height)

OR

- 50 grams when dried of harvested flowering heads. Where cannabis resin is possessed, 1 gram of resin will be deemed equivalent to 5 grams of dried flowering heads. The total amount of resin, and harvested cannabis flowering heads when dried, shall be not more than 50 grams

OR BOTH.

Height should be measured vertically from the point at which the plant stem emerges from the levelled ground, or growing medium in the case of hydroponics, to the top of the tallest stem.

2. *There will be an opportunity to expiate subsequent offences of possession of a small quantity of cannabis.*

Subsequent apprehensions (that is second or subsequent offences) would result in an infringement notice being issued. The infringement notice would include information about the harms associated with cannabis, the legal provisions which apply to the drug and information about treatment services for people with cannabis related problems. Repeat offenders under the infringement notice system would not have their penalties increase with each offence. Care, however, would be taken to ensure that all such penalties were discharged.

There will be two tiers of infringement notices with accompanying penalties for possession of *a small quantity* of cannabis. The recommended tiers are:

Tier 1: CANNABIS POSSESSION INFRINGEMENT NOTICE

\$50 for possession of not more than:

- 10 growing plants of which not more than 3 plants shall be mature (possess flowering heads or be more than 50 cm in height)

OR

- 25 grams when dried of harvested flowering heads. Where cannabis resin is possessed, 1 gram of resin will be deemed equivalent to 5 grams of dried flowering heads. The total amount of resin, and harvested cannabis

flowering heads when dried, shall be not more than 25 grams
OR BOTH.

Tier 2: CANNABIS POSSESSION INFRINGEMENT NOTICE

\$150 for possession of not more than:

- 10 growing plants of which not more than 3 plants shall be mature (possess flowering heads or be more than 50 cm in height)

OR

- 50 grams when dried of harvested flowering heads. Where cannabis resin is possessed, 1 gram of resin will be deemed equivalent to 5 grams of dried flowering heads. The total amount of resin, and harvested cannabis flowering heads when dried, shall be not more than 50 grams.

OR BOTH.

Possession of an amount of cannabis greater than *a small quantity* but less than a *trafficable quantity* will be dealt with as a non-expiable cannabis possession offence and subject to the criminal penalties specified in the *Drugs Poisons and Controlled Substances Act 1981*.

3. The means of expiation would be able to be varied.

In order that legislation regarding possession of *a small quantity* of cannabis not discriminate against those with limited income, the infringement notice would be able to be dispensed within a specified period (28 days) by either: (1) Payment of the fine; (2) Attending a specified cannabis education session. Those unable to pay the fine within the 28 day period may, prior to the end of this period, arrange to pay their fine by instalments over a number of months.

4. The provision of a small quantity of cannabis by an adult to a person of 17 years of age or more will not be regarded as a supply (trafficking) offence.

Thus, if person A provides *a small quantity* of cannabis to person B, whether gratis or for profit, then this transaction will not be deemed a supply (trafficking) offence. Provision of greater than *a small quantity* of cannabis from one adult to a person of not less than 17 years of age will be deemed a supply (trafficking) offence.

Provision of any amount of cannabis by an adult to a person of less than 17 years of age will be deemed a cannabis supply (trafficking) offence. The onus of proof will be on the defendant to show that they were unaware that the person was under the age of 17 years.

5. *A trafficable quantity of cannabis will be defined as possession of more than 10 plants or greater than 250 grams of cannabis flowering heads when dried.*

Most legislative systems specify a *trafficable quantity* of a drug which provides grounds for an inference that the accused meant to traffic in the drug. This amount is usually set at a level which far exceeds that for personal use of the drug. For the purpose of the proposed model a trafficable quantity of cannabis will be defined as:

- More than 10 plants of any height

OR

- the weight of harvested flowering heads when dried shall be greater than 250 grams. Where cannabis resin is possessed, 1 gram of resin will be deemed equivalent to 5 grams of dried flowering heads. Thus the total amount of resin, and cannabis flowering heads when dried, shall be more than 250 grams.

On proof of possession of a trafficable quantity of cannabis, the prosecution should bear the legal burden of proving an intention to traffic, and the onus should be on the accused person to bring forward evidence that there was no intention to traffic.

6. *Failure to dispense with the infringement notice will not result in automatic conviction on the cannabis charge*

Failure to dispense with the infringement notice by the options outlined in 3 above would result in the offender being dealt with as someone with a financial debt to the state, and at the discretion of police or prosecutor, *may* forfeit assets, negotiate to pay their fine in instalments, or be prosecuted for the underlying cannabis offence.

7. *Persons under the age of 17 years would be dealt with under existing juvenile provisions*

All persons under the age of 17 years found in personal possession of cannabis or charged with cannabis trafficking would be dealt with under the juvenile

court/children's panel system which would have wide ranging discretion as to how it dealt with such offenders.

8. Records of non-supply offences will be automatically expunged after 2 years.

All record of formal cautioning, infringement notices and criminal convictions involving personal possession (but not supply offences as outlined in 2 above) should be automatically expunged after a two year period during which no other drug-related offence is recorded. Expungement should also occur of any record on any centrally held data base such as the National Names Index (NNI) and the National Exchange of Police Information (NEPI) system maintained on behalf of the Commonwealth and state and territory police forces.

9. Possession of equipment for the preparation and consumption of cannabis products should continue NOT to be an offence under Victorian law.

10. Penalties for driving while impaired by cannabis should be commensurate with those for driving under the influence of alcohol.

Should a suitable roadside measure for cannabis impaired driving be developed then penalties equivalent to those for driving under the influence of alcohol should apply with similar provision for these penalties to escalate for subsequent such offences.

Goals and evaluation criteria for the recommended model

An evaluation of the preferred model would need to address the extent to which it at least met the following goals:

1. Reduce the harms resulting from cannabis use itself by:

- Not increasing the prevalence of regular use in comparison with that for other Australian jurisdictions
- Removing legal barriers to help seeking for those with cannabis related problems
- (Possibly) providing a source of funds which could be diverted to fund cannabis-related treatment.

2. Reduce the adverse social costs to individuals of being apprehended for a minor cannabis offence by:
 - Providing cautioning for first offenders
 - Providing infringement notices with a scale of penalties according to amount and non-criminal sanctions for subsequent offences
 - Providing a range of options for dispensing with notices to reduce the likelihood that those who are on lower incomes fail to expiate and face more severe penalties
 - Ensuring that failure to expiate does not result in automatic conviction for the cannabis offence.
 - Requiring mandatory expungement of offences after two years non offending
 - Providing education regarding the harmful aspects of use.
3. Reduce the adverse costs to society as a whole from the enforcement of the criminal law against minor cannabis offenders by:
 - Reducing the amount of police, court and corrective services resources devoted to enforcing minor cannabis offences.
4. Reduce the proportion of the total amount of cannabis consumed which is supplied by larger more commercial sources compared to that which is grown by the user or other low-level user/suppliers by:
 - Classifying cultivation, possession and/or provision of a *small quantity* of cannabis as expiable civil offences rather than criminal offences.
5. Increase the public's understanding of the laws which apply to cannabis by:
 - Undertaking a public education campaign on the laws applying to cannabis.

Explanatory notes for the recommended model

1. The option would provide for cautioning of first offenders.

We have retained a formal caution for first offenders for a number of reasons. Firstly, since September 1998 cautions already apply to the first two offences of possession/use cannabis under the 50 gram limit. Given that, based on available data,

almost half of cannabis offenders are likely to be first offenders (Lenton, Ferrante & Loh, 1996), maintaining a discretionary caution for the first offence is likely to result in a reduction in adverse social consequences for a large number of offenders.

Secondly, the caution provides an opportunity for a positive interaction between the police officer and the offender and provides a context for an instructive warning to be issued. This also allows the offender's attention to be directed to information about potential harms associated with cannabis, the laws which apply to it and information on treatment options for those with problems.

While there may be some potential harms due to a record being made in the police system that a caution has been issued, we believe that the benefits of including a caution for a first offence outweigh these risks. In our consultations about the preferred model, concerns were expressed about cautions being recorded and the consequences of this, and the suggestion was made that there may be less unintended consequences for the offender if there was not a formal caution, but rather an infringement notice for a first offence. Maintaining any system that includes increases in penalties for subsequent offences, including from caution for first offence to infringement notice for second and subsequent offences, necessitates records being kept of these relatively minor offences. With this comes the risk that any record, once in the police system, may lead to the offender receiving further attention from the police in future and a snowballing involvement with the criminal justice system, particularly as computerised data storage and retrieval systems become increasingly more efficient. On the other hand, records are already maintained of these offences within the police system. Furthermore, under the preferred model, the consequences of a subsequent offence within the expiable amount will result in a fine rather than the significantly harsher criminal conviction and accompanying criminal record. As police record systems across the board are likely to become even more powerful in terms of storage, retrieval and useability, the issue of how the information is used, and by whom, will need to be addressed. We have thus concluded that the potential benefits of including a caution for first offenders should outweigh the possible risks resulting from the necessary record of the caution being made.

While possession levels for personal use is an issue both here and in subsequent sections, it will be addressed here. It is not possible to absolutely accurately establish equivalents across plants, wet cannabis, dried cannabis and hashish (cannabis resin).

What we have proposed is an attempt to specify cut-off points for small quantities for personal use and trafficable amounts which provide reasonable yardsticks for those engaged in the practice of law enforcement as well as those growing, or using cannabis.

The limit of 10 plants in total (including seedlings and juveniles), with not more than three mature plants (over 50 cms in height, or containing flowering heads) is designed to provide enforceable levels for police while allowing the grower to have a reasonable number of juvenile plants for crop selection and sexing while also acknowledging that some plants will not survive due to the vagaries of growing conditions. DeLauney (1996) in her study of commercial cannabis crop growers in northern NSW concluded that on average a mature plant yielded 4 oz (about 200g) of heads per plant, but there was great variability in yield depending on a number of factors including the growing conditions and experience of the grower. Additionally, her work and that of Lenton, Bennett and Heale (1999) suggests that only the heads and tips of female plants have any real value in the cannabis market. The height limit has most relevance for plants grown outside which informal consultation with growers and users has indicated can generally be taller than those grown indoors using hydroponic equipment. While it is not possible to definitively provide a height-based cut-off point for culling, sexing and so on, the somewhat arbitrary limit of 50 cm does seem to allow reasonable flexibility for the grower/user while providing law enforcement officers with an objective threshold. The guidance regarding the method of measuring the height, specified in the definition of a *small quantity*, should further clarify any ambiguities here. The limit of three plants in head prevents growing more than 3 plants under 50 cm of the shorter varieties, favoured by many indoor hydroponic growers, which could otherwise all be in head and therefore contain considerable amounts of heads.

The 50 gram limit of cannabis plant material defined as a *small quantity* currently applies under the Victorian *Drugs Poisons and Controlled Substances Act 1981* and is the maximum amount eligible for cautioning under the Victorian cannabis cautioning scheme. However, some of the cannabis material such as juvenile plants in the ground, dried leaves and stalks have negligible THC content and are of little, if any use for the cannabis user, or value in the cannabis market. Given this, we have chosen to apply the possession limits to those cannabis products which are useable as a drug,

that is the harvested flowering head and tips of the female plant (heads), and cannabis resin (hashish). We have decided to exclude the weight of cannabis heads which remain on the growing plants from the calculation of total dried head equivalents. Thus it is possible for the person to have more than 50 grams of cannabis heads if that cannabis is still growing on a live plant. Possession of not more than 50 grams, when dried, of harvested cannabis as well as not more than ten live cannabis plants, of which not more than three can be in head and not more than three can be more than 50 cm tall, is also classed as a *small quantity* and is eligible for caution and expiation. This was done to keep the system as administratively simple as possible and reinforce self-supply of the drug.

We have presented a method for aggregating all these substances to calculate a total weight defining a *small quantity* expressed in terms of gram equivalents of dried cannabis heads. As many Australian jurisdictions have set limits for possession of cannabis resin which are one fifth that for cannabis plant material we have adopted the same ratio in adopting weight equivalents. Thus one gram of cannabis resin is assumed to be equivalent to five grams of dried cannabis heads. Cannabis heads recently harvested must be dried and weighed. While this may at first seem cumbersome, in drug law enforcement the specific amount and composition of a seized powder can often only be determined once the material has been weighed and subjected to testing to verify its composition.

We believe that the method offered provides a workable way of taking into account possession of multiple cannabis substances.

2. *There will be an opportunity to expiate subsequent offences of possession of cannabis for personal use.*

We have chosen to apply a two tier penalty system for expiable offences with accompanying scales of offences. The tiers are set according to the amount of cannabis, rather than the number of cannabis plants, in the persons possession as it is the dried cannabis which is used. The reason for the tiered scales of infringement is to reinforce the possession of smaller, rather than larger amounts of the drug. Furthermore research on the South Australian expiation notice system suggests that one of the reasons for non-payment of fines is that those who are least able to pay, because they are unwaged or on benefits, may be more likely to incur an infringement

and may be most disadvantaged by a sizeable financial penalty. We believe that the smaller penalty of \$50 for the smallest possession offence may increase the proportion of expiations and reduce costs to the system by fine defaults or by offenders choosing other options for dispensing with infringement notices (see point 3 below) which may be more costly to administer.

3. The means of expiation would be able to be varied.

Offenders are given choices as to how they clear their fine within the 28 day period available for expiation. We believe that any second or subsequent offence should be able to be cleared according to the full range of options unless, for example, the person has been shown to have defaulted using this method previously.

4. The provision of a small quantity of cannabis by an adult to a person of 17 years of age or more will not be regarded as a supply (trafficking) offence

While it may be legislatively expedient to assume that all cannabis users will grow their own cannabis in practice this is unlikely to be the case. In the real world there will at least be some low level provision of cannabis. The Model Criminal Code points out that:

The overwhelming majority of offenders who appear before the courts on a charge of trafficking arising from possession are not caught with kilo quantities...An unjustified conviction for dealing will often impose social and individual harms which far exceed the harms associated with the use of the drug in question (Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, 1998, p.87).

It has been argued that the preferred system should be flexible enough not to criminalise low-level supply. We believe that the limits prescribed in Tiers 1 and 2, together with this clause, provide adequate flexibility to encompass this.

We note also that police and prosecutors have it in their discretion to continue issuing infringement notices and confiscating the cannabis material of persons who they believe are trying to subvert the intention of the law (by, for example, co-operating with other growers in an organised collective to supply the market). They also have the option of applying criminal sanctions to those who refuse to dispense with their infringement notice by one of the means outlined in 3 above.

The application of criminal sanctions to any level of supply by an adult to a person under the age of 17 years is on face value a straight forward matter. However, it has been noted that this could mean that someone at a party who passes a cannabis cigarette to another person who is in reality under 17 but does not appear so would be committing a trafficking offence with potentially serious consequences. We believe allowing the accused person the capacity to make a case that they were unaware that the person was a juvenile adequately responds to this concern.

5. *A trafficable quantity of cannabis will be defined as possession of more than 10 plants or greater than 250 grams of cannabis flowering heads when dried.*

The Model Criminal Code (Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, 1998) points out that in most jurisdictions, the possession of a quantity of a prohibited drug which legislatures have declared to be ‘trafficable’, provides grounds for an inference that the accused meant to traffic in the drug. In these jurisdictions the trafficable quantities specified in legislation are intended to represent quantities which so greatly exceed the amounts for personal possession that it is extremely unlikely that a person who has that amount in their possession has that amount for their personal use. Whilst we have done this with regards to the amount of harvested cannabis heads the person has in their possession, we have specified the trafficable quantity of plants at more than 10 in order to clearly limit the number of plants which are grown. We agree with the recommendations of the model code that on proof of possession of a trafficable quantity of cannabis, the prosecution should bear the legal burden of proving an intention to traffic, and the onus should be on the accused person to bring forward evidence that there was no intention to traffic.

6. *Failure to dispense with the infringement notice will not result in automatic conviction on the cannabis charge*

The South Australian CEN system has been criticised because a person who fails to pay the prescribed penalty within the time period is almost always automatically charged with the underlying minor cannabis offence and will almost certainly be convicted of it. As a result, substantial numbers of people receive criminal convictions for minor cannabis offences. In the preferred model we have adopted aspects of the

systems in the ACT and the NT which also employ infringement notice systems by allowing an offender to be dealt with as a fine defaulter who has a financial debt to the state, and at the discretion of police or prosecutor, *may* forfeit assets, or be prosecuted for the underlying cannabis offence. We have also added the option for defaulters to pay their fine in instalments through arrangements with a debt collection agency, which is a suggestion being considered in improving the SA system. Combined with the two tier expiation notice system this clause should reduce the likelihood of net-widening due to failure to expiate.

7. *Persons under the age of 17 years would be dealt with under existing juvenile provisions.*

No additional comments.

8. *Records of non-supply offences will be automatically expunged after 2 years.*

We are aware that ‘expungement’ is never total and absolute. Clearly it is most preferable that no criminal record is incurred in relation to these offences. We would thus recommend that in addition to automatic expungement after 2 years that cautions or infringement notices are treated as misdemeanours and do not appear in criminal record checks for employment or travel visa purposes and are not recorded on national crime data bases such as NEPI and the NNI.

9. *Possession of equipment for the preparation and consumption of cannabis products should continue NOT to be an offence under Victorian law.*

No additional comments.

10. *Penalties for driving while impaired by cannabis should be commensurate with those for driving under the influence of alcohol.*

While the evidence for low levels of cannabis impairing driving ability are questionable at best, it is clear that someone who is very intoxicated with cannabis may be impaired in their capacity to drive. We believe that where cannabis related impairment can be demonstrated penalties should be commensurate to those for driving under the influence of alcohol.

The effects that the recommended model might have on drug-related harms and relevant services in Victoria and their evaluation

It is not possible to precisely predict the impact of the recommended model on cannabis-related harms in Victoria. However, it is possible to extrapolate from the evidence and argument presented previously in order to make some statements about the likely effect the recommended model might have on a number of domains. If the model is implemented, it will be essential to carefully evaluate the extent to which the changes have intended and unintended consequences. Goals against which the model should be evaluated have already been specified and an evaluation will inform any required changes to the model.

Likely impacts on rates of cannabis use in Victoria

Implementation of the recommended model is unlikely to itself result in an increase in rates of cannabis use in Victoria compared to other States. Other things being equal, it is likely that rates of lifetime cannabis use across the country will continue to gradually increase independent of the legal frameworks in place in the various States and Territories. Such increase will occur as the proportion of the population born after the 1950s continues to increase with each birth cohort. Research evidence on the impacts of the Cannabis Expiation Notice System (CEN) in South Australia (Donnelly, Hall & Christie, 1999) suggests that implementing the recommended model, which is another example of a *prohibition with civil penalties* approach, should not result in increasing rates of recent (last month or last year) cannabis use in the Victorian community. It is possible, but not likely, that there may be a temporary increase in the proportion of the population who have ‘ever’ used the drug. Based on data from the South Australian example (Donnelly, Hall & Christie, 1999; Donnelly, Oldenburg, Quine, *et al.*, 1992; Neill, Christie & Cormack, 1991), it is not expected that the introduction of the model will result in a significant increase in cannabis use among young people in particular.

Likely impacts on rates of other drug use in Victoria

The introduction of the proposed model should not result in increased rates of use of drugs other than cannabis in Victoria, compared to the other States and Territories. Evidence reviewed elsewhere in this document on the so-called ‘gateway’ theories, and data from the Netherlands (Cohen & Sas, 1998), does not suggest that removing criminal penalties for minor cannabis offences will result in increases in population prevalence of the use of other illicit drugs.

Likely impacts on health-related harms associated with cannabis

Clearly, cannabis has the capacity to harm those who use it although the most probable public health risks of cannabis use itself are likely to be small to moderate in size because of the relatively small proportion of the population who are heavy users (Hall, 1995a). Given that the evidence suggests overall rates of use in the population are unlikely to be significantly increased by the introduction of the recommended model in Victoria, the question remains as to whether or not the number of heavy users will be significantly increased. While there are limited data on which to make predictions, it is unlikely that the model would greatly increase the number of heavy users.

Likely impacts on social harms associated with cannabis conviction

Impacts on the social harms associated with a cannabis conviction are likely to be reduced. Under the current cannabis cautioning system offenders receive a criminal conviction after their second caution. While evaluation of the cannabis cautioning system is at this stage preliminary (Victoria Police Strategic Development Department, 1998), there is some suggestion that receiving a caution may increase the likelihood of further involvement with the criminal justice system and perhaps result in a criminal conviction for a minor cannabis offence (Ditchburn, 1999). Under the proposed model non-criminal infringement notices will be issued for second and subsequent offences thus removing the possibility of criminal conviction for a minor cannabis offence.

Likely impacts on treatment seeking

The proportion of treatment seekers who nominate cannabis as their primary drug problem may increase as a result of implementing the recommended model. However,

if it does happen, this is unlikely to be because of an increase in the number of people who are using the drug, but rather because of an increased understanding of cannabis-related harms as a result of community education campaigns.

Likely impacts on law enforcement

If the recommended model is adopted, its success will depend in a large part on the way it is enforced by police, who since the commencement of this project, have implemented a cannabis cautioning scheme Statewide. The recommended model offers further opportunities for releasing police resources as it encourages a continued use of informal warnings, and second and subsequent offences are dealt with by way of the administratively simple infringement notice, rather than the formal charge process which has been shown to be far more costly in terms of police.

The cautioning provisions, both formal and informal, as well as the two-tiered expiation notice system and the variety of options for clearing notices, should reduce the likelihood of net-widening. The model also provides a workable mechanism for police to enforce the law, consistent with harm reduction. It will allow for the shaping of the cannabis market so that a greater proportion of the cannabis which is consumed is supplied by small-scale user growers, rather than by large-scale commercial suppliers with criminal associations. In this way it may be used to separate the cannabis market from that for other potentially more dangerous drugs.

The recommended model is likely to further reduce the impact on the courts and other components of the criminal justice system beyond that which appears likely through the existing cannabis cautioning system because civil penalties, rather than those involving court appearance, apply for subsequent offences.

Likely Impacts on community attitudes and understanding of the law

It is important that adoption of the recommended model is accompanied by a community education campaign about the changes to the laws. If this is done it is most likely that the laws will be understood and well supported by the Victorian public.

1 Project background and organisation of the discussion document

This document has been prepared as a result of the authors winning a competitive tender called by the Drugs and Crime Prevention Committee (DCPC) of the Parliament of Victoria in March 1998. The primary task was to:

Produce a high quality Discussion Paper for broad public distribution, which stimulates public debate concerning the arguments surrounding cannabis control. The discussion paper will be sophisticated and comprehensive in scope, and as accessible as possible to a wide lay audience. While the discussion paper is to be representative in the arguments, issues and positions it addresses, its intention is ultimately to highlight the model of regulation of cannabis use, possession and supply that emerges as the most appropriate for Victoria on the weight of the available evidence and arguments.

(Tender Documentation, Drugs and Crime Prevention Committee - Parliament of Victoria, see Appendix 1)

A further condition of the original tender documentation which specified the design of a limited term operational trial study of any alternative system of regulation or legislative control which might be recommended was deleted from the project specifications by the DCPC (see Appendix 1). During the post-tender negotiation process those short listed were notified that due to previously unforeseen budget constraints on the DCPC the tender brief had to be re-negotiated. As a result the design of the limited term trial was deleted from the project contract.

Background

The call for tenders to produce for Victoria a high quality discussion paper for broad public distribution to stimulate public debate regarding the options for cannabis control was made by the DCPC in the context of the recommendations of The

Premier's Drug Advisory Council, which had been chaired by Professor David Penington, and the Victorian government's response to these in the 'Turning the Tide' Drug Reform Strategy.

The Report of the Premier's Drug Advisory Council (1996) concluded with eight general recommendations, each with several specific sub-recommendations. Each of these subscribed to the principle of 'harm minimisation', or 'harm reduction'. The majority of the recommendations were accepted and implemented by the Victorian Government, particularly those relating to education, treatment, rehabilitation and law enforcement. However, in responding to the report of the Council, the Government expressed reservations concerning Recommendation 7 and its sub-recommendations (State Government of Victoria, 1996).

Recommendation 7 concerned the *Drugs, Poisons and Controlled Substances Act 1981*. Of the twelve sub-recommendations listed under Recommendation 7, the Government did not support four. The proposals not supported were that the use and possession of small amounts of cannabis (no more than 25 grams) should no longer be an offence (recommendation 7.1), that cultivation of up to 5 cannabis plants per household for personal use should no longer be an offence (recommendation 7.2), that the provisions of the *Summary Offences Act* should be reviewed to allow police to deal with offensive behaviour occurring under the influence of cannabis and local by-laws be enacted to restrict consumption of cannabis in public places (recommendation 7.4) and that legislation be introduced to expunge all recorded convictions for the possession and use of small amounts of cannabis (recommendation 7.5). The remaining eight sub-recommendations were supported, seven in full and one in part.

In responding to these recommendations the Victorian Government made it clear that alternative strategies to reduce the level of cannabis use and cannabis related harms (primarily education, treatment and law enforcement) should be implemented and given sufficient opportunity to work so that an informed and accurate assessment of the need for decriminalisation could be made, the implication being that alternative forms of cannabis control were still under consideration by the government. (Investigation of Issues of Cannabis Regulation – Tender Documentation, March 1998; State Government of Victoria, 1996).

The proposed methodology for the current project was specified in the Tender Documentation (see Appendix 1):

The conduct of the project will require a range of investigative techniques including the analysis of policy issues and arguments, analysis and interrogation of empirical studies and data...The central conceptual focus will be harm minimisation, and the impacts and outcomes of various forms of regulation of cannabis on the prevalence of drug-related harms.

(Tender Documentation, Drugs and Crime Prevention Committee, March 1998 – see Appendix 1)

The specific task

The Tender Documentation specified that the following matters would need to be addressed as part of the investigation in drafting of the Discussion Paper:

Options concerning the legal regulation of cannabis possession, use and supply suitable to a harm minimisation framework

- Clarification of why the question of cannabis regulation is an important one including delineating the forms of personal, economic and social harms associated with cannabis possession, use and supply.
- A clarification of the principles and general approaches underlying harm minimisation policies.
- A description of the major alternative options and proposals relating to the legal status of cannabis possession, use and supply with particular attention to their status as crimes. Including a discussion of the various options available to law enforcers and the judiciary for dealing with offenders.

A comparative analysis and evaluation of the practicality, effectiveness and potential benefits of the alternative forms of regulation

- Would the liberalisation of current regulatory practices in Victoria concerning cannabis be likely to increase it's use or the use of other drugs, particularly for youth? What relevance do gateway theories of escalating drug use have in this connection?
- What are the experiences of other Australian States and territories with the regulation of cannabis possession and use? To what extent have the policies of liberalisation in South Australia and the ACT been successful in reducing drug-related harms typically associated with cannabis use. This will require collection or collation of the most up to date data.

The regulation of cannabis possession, use and supply

- What models of cannabis control and legal regulation have been adopted internationally? And for what reasons? What success have they had? Some international jurisdictions which decided to liberalise in certain ways have reverted to their former position of criminalisation. What factors appear to have influenced or brought about this reversal?

Proposals for the Victorian Situation

- Proposals for Victoria need to take into account how, if at all, liberalisation of cannabis regulation and legislation might possibly reduce drug-related harms in Victoria.
- What should count as *sufficient* or *satisfactory* reduction of drug-related harm to indicate whether the education, treatment and law enforcement strategies identified in ‘Turning the Tide’ have ‘worked’.
- Specification of the mode of legal regulation of cannabis use, possession and supply that is the most defensible and effective for the Victorian context.

This document is the result of this process. It was prepared by an independent consortium of researchers with considerable experience in drug policy, research and treatment in general, and study of cannabis regulation in particular. Independent comment on earlier drafts of the document was also provided by five other experts in the field (Appendix 2). Two senior legal counsel (Appendix 3) offered opinion on the draft of the model recommended for regulation of cannabis possession, use and supply in Victoria which is presented in Chapter Eight.

The structure of the discussion document

The structure of the discussion document from chapter two onwards largely follows the plan set out in the team’s successful tender bid which is based on the above task outline specified in the Tender Document. In places the reader is referred to text and detailed data which has been placed in Appendices. Each chapter begins with a summary of the areas to be covered and concludes with a summary of the main points in bullet form.

Chapter Two sets the context by describing the extent of cannabis use in the community and summarising the potential harms associated with cannabis use and the costs associated with maintaining cannabis prohibition.

Chapter Three discusses harm reduction as an approach, considers issues around harm reduction and law enforcement, and responds to the more common criticisms of the harm reduction approach.

Chapter Four describes the different legislative models for control of possession and use of cannabis and addresses things to consider regarding the goals of such policies.

Chapter Five describes the legislative models that apply to minor cannabis offences in fourteen different countries and considers the impact of the International Treaties on the capacity to apply the various models of cannabis possession other than the prevailing strict prohibition.

Chapter Six presents the findings of research into the social impacts of the various legislative options which apply to cannabis in different Australian states and territories and summarises the laws and the available statistics on their application. Finally the results of the recently completed research into the Cannabis Expiation Notice Scheme of South Australia are summarised.

Chapter Seven considers the evidence and arguments surrounding deterrence effects of cannabis prohibition, gateway theories, and impacts of liberalisation of cannabis laws on the cannabis use of youth.

Chapter Eight presents a comparative assessment of the most viable regulatory options for the Victorian context, and offers a recommended legislative model for cannabis possession, use and supply in Victoria and considers the likely impacts of such a model.

2 Cannabis use and associated harms

This Chapter sets the context for the rest of the discussion document by:

- Describing the extent of cannabis use in Australia in general and Victoria in particular
- Summarising the potential acute and chronic health-related harms associated with cannabis use
- Summarising the social and financial costs associated with maintaining cannabis prohibition.

Overall prevalence of cannabis use

Overall prevalence - Australia

Lifetime Cannabis Use

Self report data concerning drug and alcohol use has been collected nationally in household surveys (NHS) undertaken since 1985 as part of the National Drug Strategy (formerly known as the National Campaign Against Drug Abuse). Surveys were conducted in 1985, 1988, 1991, 1993, 1995 and 1998 (Australian Institute of Health and Welfare, 1999; Commonwealth Department of Health and Family Services 1996). In the most recent of these surveys, 39% of all respondents aged 14 or over reported having ever used cannabis in their lifetime. In their telephone survey of public attitudes to cannabis legislation in Australia, Bowman and Sanson-Fisher (1994) also found that 39% of participants aged 18 to 70 years said they had ever used cannabis. Ever used cannabis figures from each year of the NHS are presented in Figure 1 for the sample as a whole and separately for those aged 14 to 29 years. It may be seen that

lifetime cannabis use is far more prevalent among young people than the population as a whole. Data on age differences in prevalence of cannabis use are presented on pages 13 to 15.

Since the early 1970's there has been a steady increase in the proportion of Australians who said they have ever used cannabis. The proportion of adult Australians who have ever tried cannabis as estimated by self report increased almost threefold between 1973 (12%) and 1993 (34%) (Hall & Nelson, 1996; Donnelly & Hall, 1994). While the surveys conducted over this period are not entirely comparable due to differences in methodology, the upward trend in prevalence of use is clear (Ali & Christie, 1994). Looking at the National Household Survey data alone there has been a significant increase in the level of lifetime cannabis use over the ten years of the survey to 1995 (Makkai & McAllister, 1998). And the figures for 1998 suggest this increase has continued.

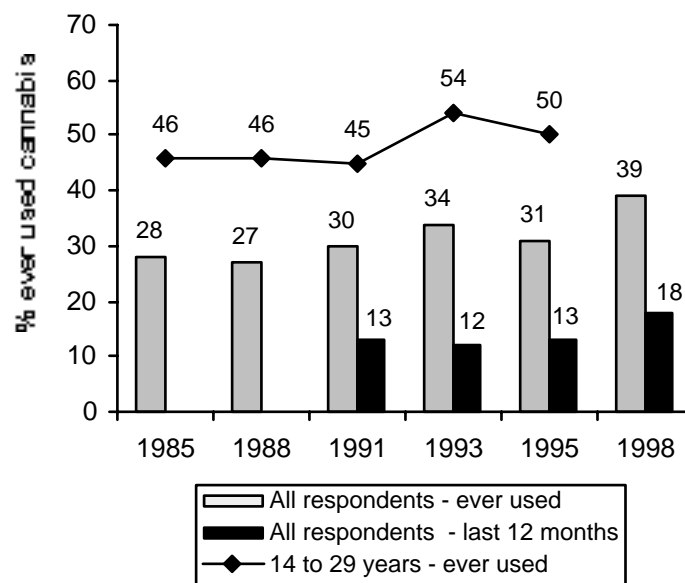


Figure 1: Prevalence of lifetime and last 12 months cannabis use as measured by National Drug Household Surveys 1985-1998.

Sources: Australian Institute of Health and Welfare (1999); Makkai & McAllister, (1998); Porritt (1991)

Recent cannabis use

Many people use cannabis on a small number of occasions and then never use again. To obtain a better picture of the level of continuing use within a population, surveys often ask whether respondents have used cannabis within the preceding twelve months. Eighteen percent of those included in the 1998 National Household Survey

reported cannabis use in the year before the survey compared to 13% in the 1995 household survey and 16% in the study of Bowman and Sanson-Fisher (1994). Although Makkai and McAllister (1998) reported that there had been no significant increase in the prevalence of annual cannabis use across the ten years in which National Household Surveys have been conducted, the latest household survey data suggests that there has been an increase.

Overall prevalence - Victoria

Figure 2 presents the prevalence rates of having ever used cannabis and having used cannabis within the last 12 months for each Australian state and territory obtained from the 1995 National Drug Household Survey (CDH&FS, 1996). Victoria fell in the middle of the range, with 31% of the Victorian sample reporting having ever used cannabis and 13% reporting use within the last 12 months (Figure 2). State by state breakdowns of data for the 1998 household survey were not available at the time of writing.

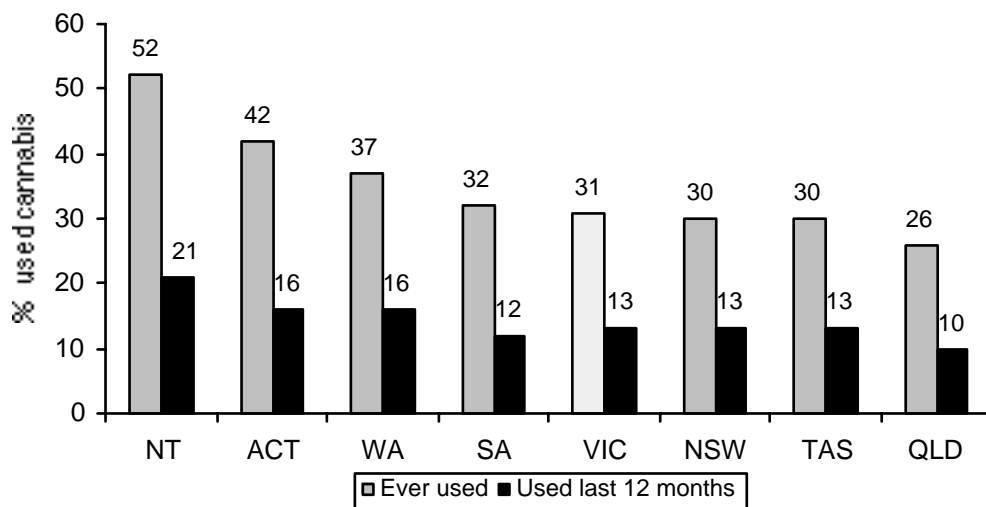


Figure 2: Prevalence of lifetime cannabis use and cannabis use within the last 12 months in each Australian state and territory, 1995.

Source: CDH&FS (1996) p. 31

Donnelly, Hall and Christie (1999) used National Drug Household Survey data collected between 1985 and 1995 to compare states and territories on the rate of ever having used cannabis and using cannabis weekly. Significant increases at the $p < .001$ level were reported in South Australia, Tasmania and Victoria, at the $p < .01$ level in

New South Wales and at the $p < .05$ level in Western Australia and Queensland. There was no significant increase noted in the Northern Territory or the Australian Capital Territory. Figure 3 does not include the 1988 NHS results due to missing data. It should be noted that the absolute number of survey participants varied across survey year and jurisdiction. The data were also adjusted to account for differences in the age and sex composition of the samples and may therefore differ slightly from the unadjusted rates reported in NHS data (Donnelly *et al.*, 1999). Once again, the rates obtained for Victoria appeared to fall in the middle when compared to other states and territories.

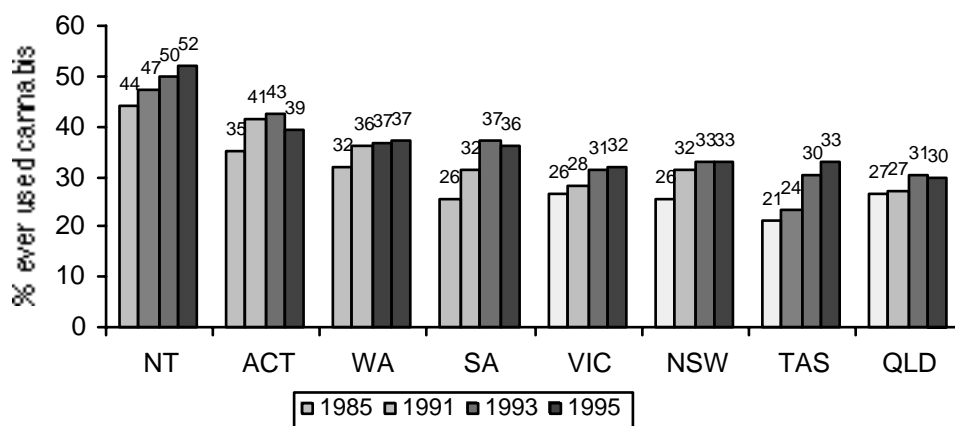


Figure 3: Prevalence of lifetime cannabis use in each Australian state and territory, 1985 to 1995.

Source: Donnelly, Hall & Christie (1999)

In addition to the six hundred Victorians aged 14 and over surveyed in 1993 and 1995 as part of the National Drug Household Survey, a further six hundred Victorians were surveyed each year using a similar instrument. The results of the two surveys were then combined (Department of Health and Community Services [DH&CS], 1995; Department of Human Services [DHS], 1998). The 1993 results were very similar to those obtained nationally; 30% of Victorians aged 14 and over surveyed said they had ever used cannabis, compared to 34% Australia-wide (DH&CS, 1995). In the 1995 survey, 28% of Victorians indicated they had ever used cannabis, compared to 31% nationally (DHS, 1998). Use within the last 12 months was reported by 12% of the 1993 Victorian sample and 11% of the 1995 sample.

Gender differences

Gender differences - Australia

The prevalence of lifetime cannabis use appears to be higher among males than females. The 1998 National Drug Household Survey found 44% of males surveyed had ever tried cannabis, compared with only 35% of females, up from 24% in 1995 (Australian Institute of Health and Welfare, 1999; CDH&FS, 1996). Furthermore, in 1998 21% of males acknowledged use of cannabis in the year preceding the survey compared to 15% of females, up from 8% in 1995. Similarly, Bowman and Sanson-Fisher (1994) found 46.9% of males and 31.5% of females reported lifetime use of cannabis. The proportion who reported use within the last 12 months were 21.5% and 10.4% respectively.

Gender differences - Victoria

Males were more likely to have ever used cannabis than females in 1991 (37% compared to 21%), 1993 (35% compared to 25%) and 1995 (34% compared to 22%) (Figure 4). The data for 1991 was taken from the Victorian component of the National Household Survey and is based on a smaller sample size than for subsequent years.

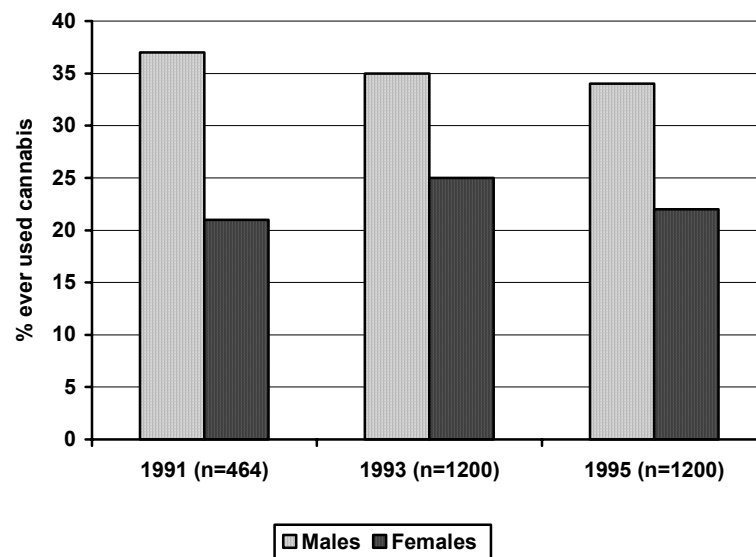


Figure 4: Prevalence of lifetime cannabis use among Victorians by gender, 1991-1995.

Source: (DHS, 1998, p. 34)

Cannabis use within the last 12 months was also more prevalent among males than females (Figure 5). In 1991, 14% of males reported using cannabis within the last month compared to 6% of females. The comparable figures for 1993 were 14% and 9%, while for 1995 they were 15% and 7%.

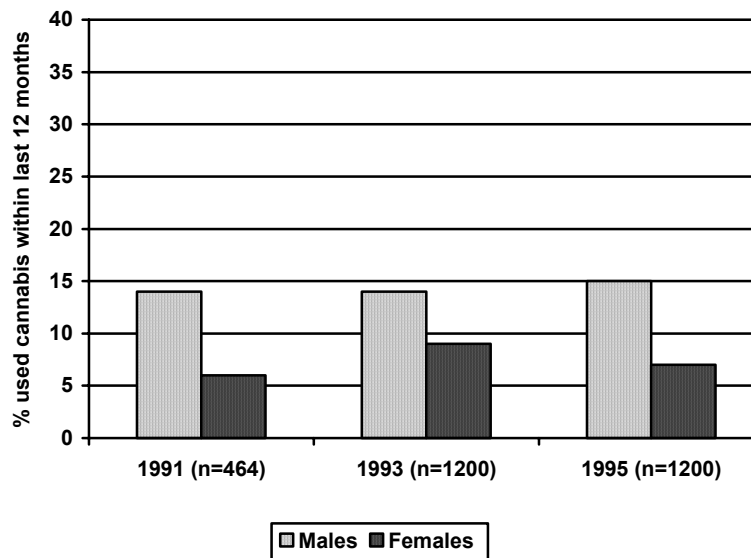


Figure 5: Prevalence of cannabis use within the last 12 months among Victorians by gender, 1991-1995.

Source: (DHS, 1998, p. 34)

Age differences

Age differences – Australia

Donnelly and Hall (1994) reviewed the available data concerning use of cannabis by different age groups since the 1970s. The data presented for 1973 to 1991 in Figure 6 is based upon their estimates and is derived from both market research data and National Household Surveys. The information for 1993 and 1995 was obtained from the database of the National Household Surveys and the 1998 data from the Australian Institute of Health and Welfare, (1999).

It may be seen that the prevalence of having ever used cannabis followed an upward trend for all age groups between 1973 and 1995. In all years for which data is available the 20-29 year old group had the highest prevalence of having ever used

cannabis, ranging from a low of 22% in 1973 to 64% in 1998. The 14-19 year old group ranged from 12% in 1973 to 45% in 1998. People over the age of 30 demonstrated the lowest prevalence of cannabis use at each time point. Only 2% of those above 30 had ever tried cannabis in 1973, rising to 25% in 1993 and 23% in 1995 (Donnelly & Hall, 1994; National Household Survey data, 1993 & 1995). Bowman and Sanson-Fisher (1994) found that 58.3% of 18-34 year olds interviewed had ever used cannabis. A third (35.8%) of those aged 35-54 reported lifetime use, as did 6.2% of respondents over 55 years. It may be expected that the lifetime prevalence of use in the oldest group will continue to increase as people who tried cannabis when young move into older age brackets.

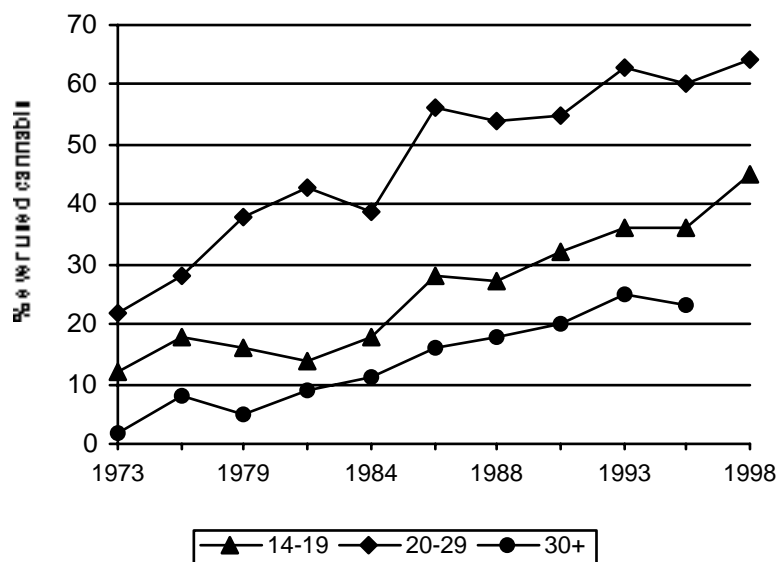


Figure 6: Prevalence of lifetime cannabis use by age group 1973-1995.

Source: Donnelly & Hall (1994), NHS data (1993, 1995), Australian Institute of Health & Welfare (1999)

Age differences – Victoria

Figure 7 illustrates the percentage of respondents in each of four age groups who have ever tried cannabis (14-24, 25-34, 35-54 and 55+) for 1991, 1993 and 1995. The data for 1991 was taken from the Victorian component of the NHS and is based on a smaller sample size than for subsequent surveys. It may be seen that the 25-34 year old age group had the highest rate of having ever used cannabis, with approximately half indicating use at each survey period (51% in 1991, 48% in 1993 and 50% in 1995) (DHS, 1998).

The regulation of cannabis possession, use and supply

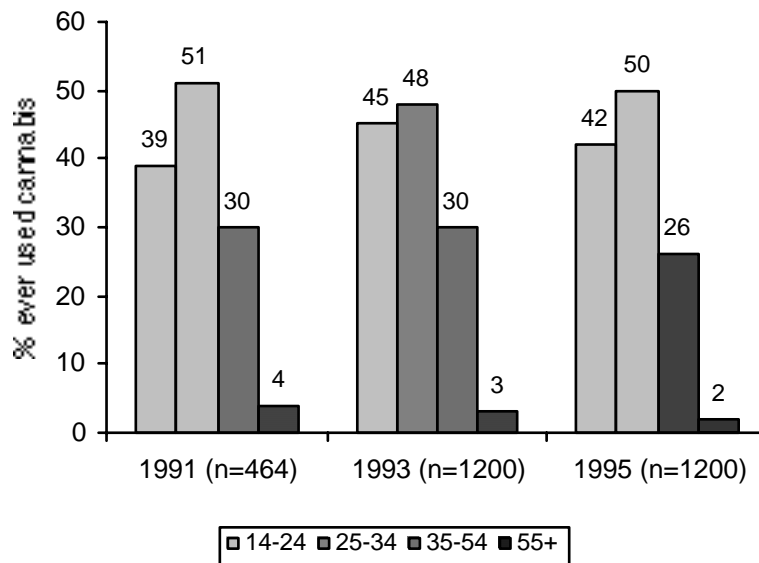


Figure 7: Prevalence of lifetime cannabis use among Victorians by age group 1991-1995.

Source: (DHS, 1998, p. 34)

Figure 8 shows that the 14-24 year olds and 25-34 year olds demonstrated a higher rate of cannabis use within the last 12 months than older respondents in 1991, 1993 and 1995.

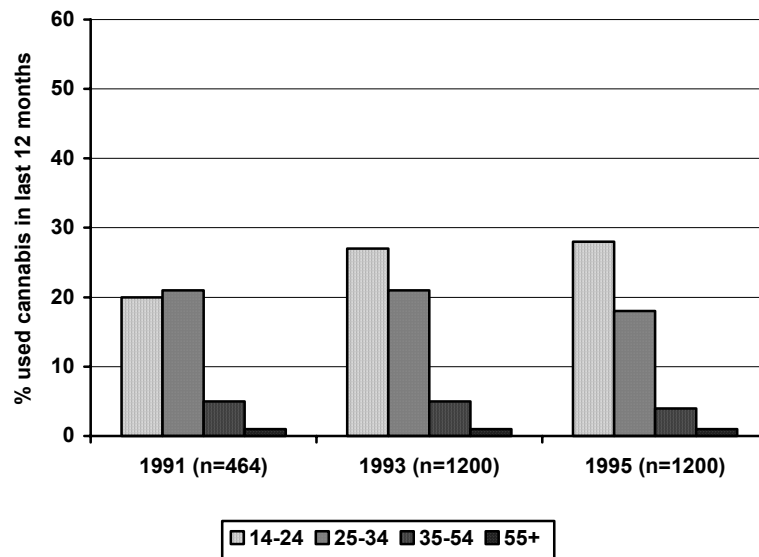


Figure 8: Prevalence of cannabis use within the last 12 months among Victorians by age group 1991-1995.

Source: (DHS, 1998, p. 34)

Among the 12 to 24 year olds 20% reported use within the last 12 months in 1991, 27% in 1993 and 28% in 1995. The apparent trend towards increasing use within the last 12 months for the 14-24 year old group was not statistically significant. Once again, the data for 1991 was based upon a smaller sample than was the case in 1993 and 1995 (DHS, 1998).

Use by adolescents

Data on the drug use of young people in Australia has been collected through surveys of school students and by analysis of the younger age groups of the National Household Survey data which includes people as young as 14 years of age.

Use by adolescents – Australia

School surveys

Cannabis use among young people has typically been measured via school surveys. The generalisability of such data may be limited by the fact that not all teenagers remain in school and the use of those who leave school may differ from those who continue (Neill, Christie & Cormack, 1991). Data is presented below on school surveys conducted across Australia and in Victoria in particular. A number of within-state school surveys of drug use have also been conducted in NSW (Donnelly, Oldenburg, Quine, Macaskill, Flaherty, Spooner & Lyle, 1992; CDHS&H, 1994), and in South Australia (Neill *et al.*, 1991), the results of which are presented in Appendix 4.

The most recent survey of secondary students was conducted in 1996 by the Centre for Behavioural Research, Anti-Cancer Council of Victoria. It involved surveying over 30 000 students from 434 secondary schools throughout Australia regarding their use of alcohol, tobacco, over the counter drugs and illicit substances (Letcher & White, 1998).

The results showed that cannabis was the most widely used illicit substance, with 36.4% of students aged between 12 and 17 years having ever used it (32.4% in the last year, 19.4% in the last month and 11.9% in the last week) (Figure 9).

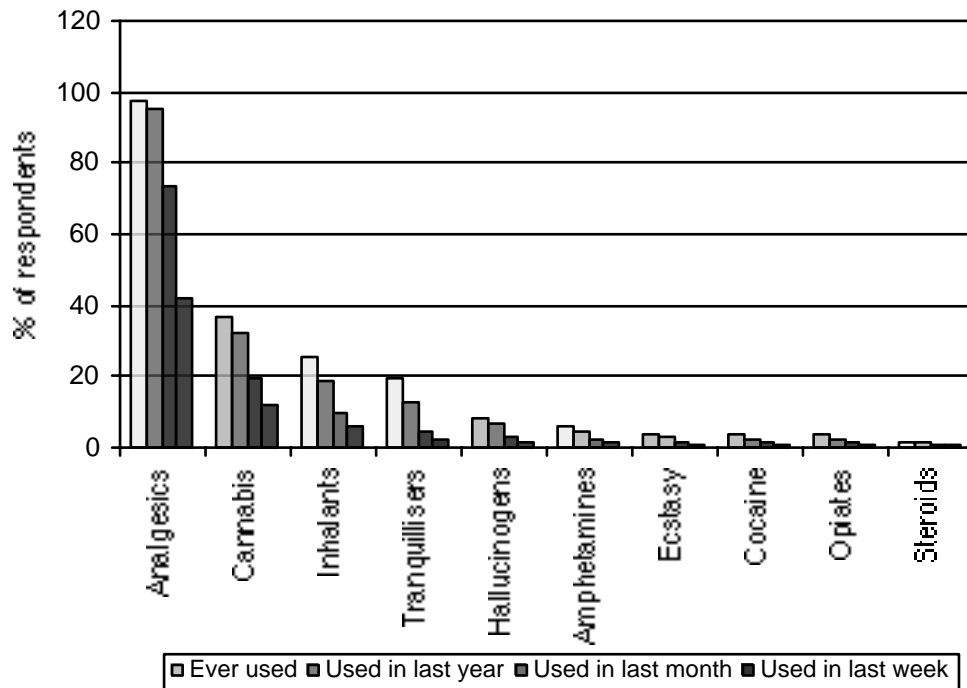


Figure 9: Proportion of Australian secondary students who have ever used, used in the last year, used in the last month and used in the last week, 1996.

Source: Letcher & White (1998)

As with other school based surveys, it was found that the proportion of students who had ever used cannabis, used cannabis within the last year, within the last month and within the last week increased with age. Among 12 year olds, 13.3% had ever used cannabis compared to 55.4% of 17 year olds (3.2% in the last week compared to 16.4%) (Figure 10).

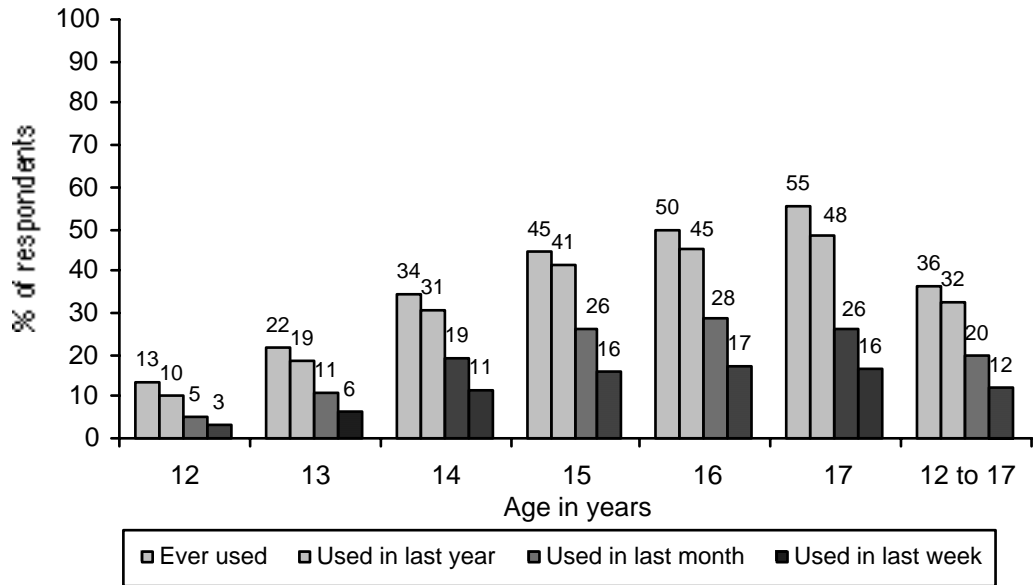


Figure 10: Proportion of Australian secondary students who have ever used cannabis, used cannabis in the last year, used cannabis in the last month and used cannabis in the last week by age, 1996.

Source: Letcher & White (1998)

A greater proportion of male respondents had ever used cannabis (39.8%), used cannabis within the last year (35.2%), within the last month (22.5%) and within the last week (14.7%) than females (33.3%, 29.8%, 16.8% and 9.2% respectively) (Figure 11).

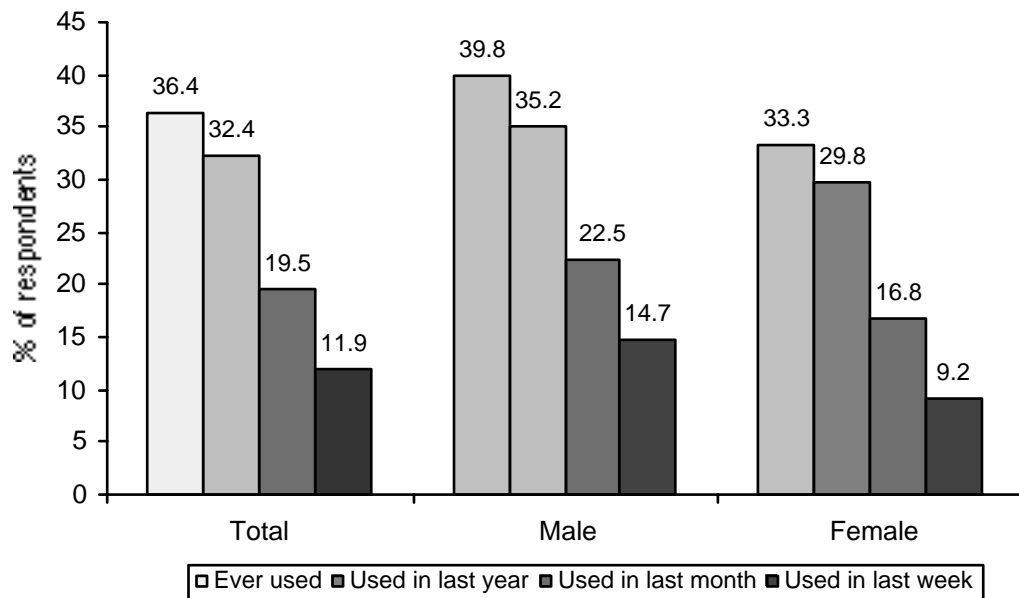


Figure 11: Proportion of Australian secondary students who have ever used cannabis, used cannabis in the last year, used cannabis in the last month and used cannabis in the last week by gender, 1996.

Source: Letcher & White (1998)

Letcher and White (1998) also investigated poly substance use. They found that 61% of all students surveyed had never used any illicit substance, 26% had only ever used one illicit substance, while 13% had used two or more illicit substances. Cannabis was the most common of the illicit substances tried and was the substance nominated by 93% of those who had only ever used one substance. Of those who had used two or more substances, cannabis was the most frequently nominated, followed by hallucinogens and amphetamines.

The report of the survey provided no data distinguishing between states and territories. However, a separate report focusing on the Victorian results is discussed on pages 18 to 20.

National Household Survey data

National Drug Household Surveys conducted in 1985, 1988, 1991, 1993, 1995 and 1998 included respondents as young as 14. The advantage of a household survey is that young people who have left school (and who are therefore absent from school based samples) are accessible. As earlier described, the proportion of 14 to 19 year olds who have ever tried cannabis has increased over the 13 years in which household surveys have been conducted (see pages 12 to 13). Makkai and McAllister (1997) looked at whether cannabis use by adolescents was related to education/work status and family household composition, however, because of problems of poor sample size, the findings were unreliable and further research is necessary before deciding whether these factors are related to cannabis use in adolescents.

Use by adolescents - Victoria

Surveys of Victorian students in Years 7 to 11 were conducted in 1985, 1989 and 1992. Students in Years 7, 9 and 11 were compared for each of the three surveys and gender differences were also investigated (The Roy Morgan Research Centre, 1993). There was a significant increase in the rate of ever having used cannabis over the survey period for the three year levels tested (see Appendix 4, Figure 32 to Figure 34). However, it was noted that the figures for Year 11 may over-estimate the change in cannabis use among this age group as school retention rates improved significantly over this time (DH&CS, 1993). The gap between males and females increased with age in all three surveys.

A further survey was conducted by the Centre for Behavioural Research in Cancer at the Anti-Cancer Council of Victoria in 1996. This study also inquired into the prevalence of cannabis use among Victorian secondary students and was broadly comparable to the earlier surveys. The report of the study included statistical comparisons between the 1996 results and the 1992 results. It was found that a significantly greater proportion of both male and female Year 7 students had ever tried cannabis in 1996 than in 1992. The same applied to Year 9 students. There was an upward trend in the use of cannabis by Year 11 students, but only use by females showed a significant increase (Department of Human Services, 1999). The data for the 1996 survey are also included in Appendix 4.

In summary, data from The Roy Morgan Research Centre, Pty. Ltd. (1993) and the Drug Treatment Services Unit (1999) show that:

- The proportion of Victorian Year 7 students who had ever used cannabis increased from 3% in 1985 to 15% in 1996, whereas the proportion of Victorian Year 11 students who had ever used cannabis was 27% in 1985 and rose to 47% in 1996.
- As would be expected, the prevalence of ever having used cannabis was greater in the higher grades. So for example in 1996 approximately 14% of Year 7s, 47% of Year 11s, and 52% of year 12s had ever used the drug.
- For each year and grade group, a higher proportion of males, compared to females had ever used cannabis. For example in Victoria in 1996 17% of Year 7 boys and 13% of year 7 girls had ever used cannabis and among Year 11 students 49% of boys and 45% of girls had ever used the drug.
- Six percent of the Year 7s surveyed in 1996 indicated that they had used cannabis within the last month. This rose to approximately 25% among Year 10 students who had the highest level of cannabis use within the past month and then decreased to 23% of Year 11 students and 23% of Year 12 students.
- In 1996 weekly use among Years 7s was reported by approximately 4% and by 16% of Year 10s. Weekly use then fell to 14% among Year 11s and 15% among Year 12 students.

In a comparison of results of school surveys in Victoria and NSW a range of demographic characteristics were found to be associated with cannabis use in the past month (CDHS&H, 1994). Students whose night time recreation is

unsupervised, who have fewer common support networks, who are older or who were truant from school more frequently were more likely to have used cannabis within the last month than other students in both states. A further variable, not living with both parents, was also found to be related to cannabis use in the last month in Victoria (see Appendix 4)

Other socio-demographic correlates of cannabis use – Australia

The National Household surveys conducted between 1985 and 1995 investigated a number of other correlates of cannabis use. The results of these surveys are reported in two summary documents (Makkai & McAllister, 1997; Makkai & McAllister, 1998). The results of the 1985-1995 surveys were pooled for lifetime prevalence and ever having been offered cannabis, while annual prevalence was based on the 1988-1995 surveys.

Ethnicity

People born in Australia, New Zealand or the British Isles were more likely to have ever been offered cannabis, to have ever used cannabis and to have used cannabis within the last 12 months than were respondents born in non English speaking parts of Europe or Asia. Makkai and McAllister (1998) suggested this finding may be associated with other social factors affecting migrants rather than cultural differences.

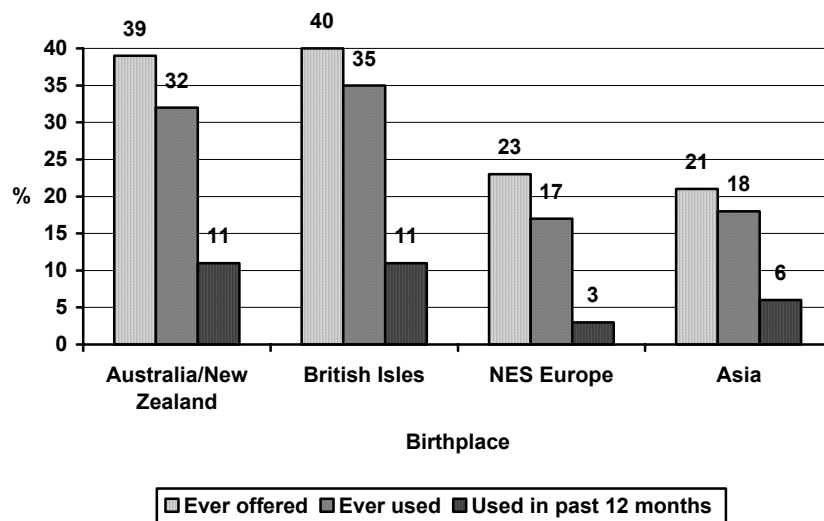


Figure 12: Prevalence of cannabis use by birthplace as measured by National Drug Household Surveys 1985-1995.

Source: Makkai & McAllister (1998)

It is difficult to gauge the level of cannabis use among Aboriginal and Torres Strait Islander people from National Household Surveys due to sample sizes. However, a supplementary survey of this group was conducted in 1994. The reported levels of use within the indigenous population were higher than those for the population in general, with 48% having ever tried cannabis, 22% reporting themselves to be current users and 11% using at least weekly (Makkai & McAllister, 1997).

Education

There is a strong association between level of education and lifetime prevalence of cannabis use, with tertiary educated respondents significantly more likely to have ever been offered and to have ever tried cannabis than other respondents. However, the association between education and use within the last 12 months is less strong (Makkai & McAllister, 1998).

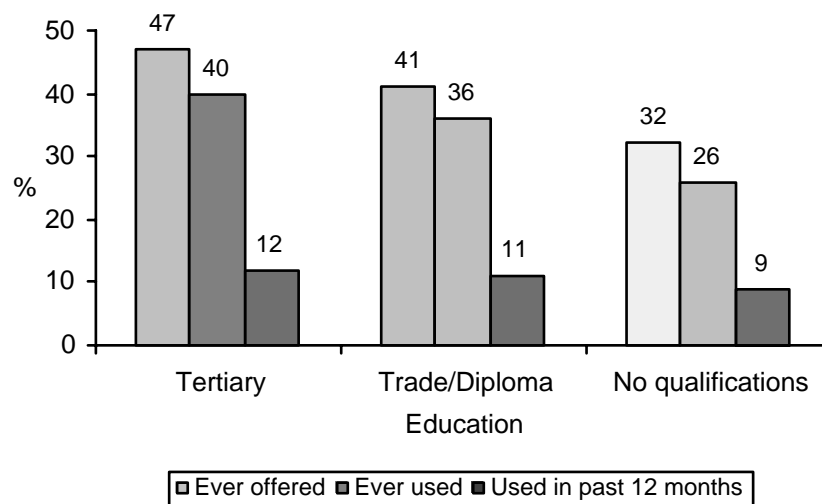


Figure 13: Prevalence of cannabis use by education as measured by National Drug Household Surveys 1985-1995.

Source: Makkai & McAllister (1998)

Employment status

Persons engaged in non manual labour, manual labour and those who are unemployed show higher rates of having ever been offered cannabis, having ever used cannabis and having used cannabis within the last 12 months than those engaged in home duties or retired (Makkai & McAllister, 1998).

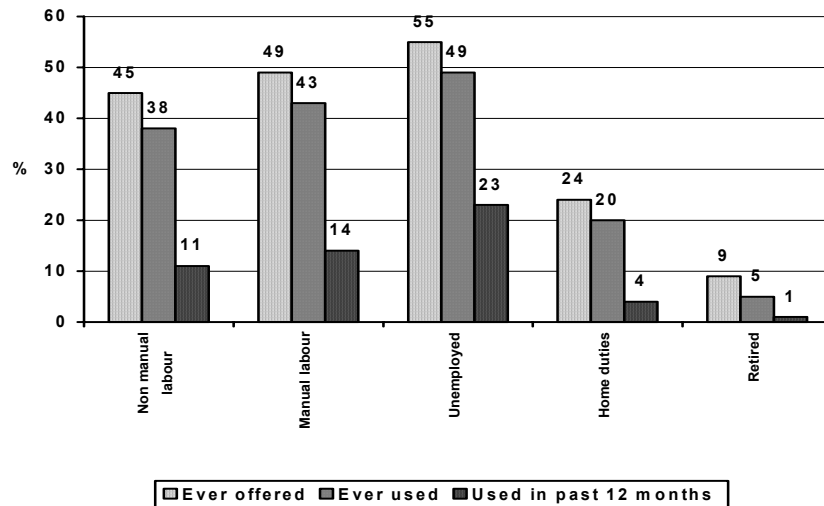


Figure 14: Prevalence of cannabis use by employment as measured by National Drug Household Surveys 1985-1995.

Source: Makkai & McAllister (1998)

A snapshot of cannabis use in Victoria – the IDRS

Data from the Illicit Drug Reporting System (IDRS) provides a picture of the cannabis market in Victoria and represents an alternative means of assessing the extent of cannabis use to population surveys. The IDRS combines information from a variety of sources to give an overall idea of drug use trends. The information collected includes a survey of injecting drug users, a survey of key informants (health workers, police, outreach and researchers) and data collected from other sources such as police and health statistics and the National Household Surveys (Hando, Darke, Degenhardt, Cormack & Rumbold, 1998). The report of the IDRS suggests that cannabis is readily available and commonly used in Sydney, Adelaide and Melbourne. Furthermore, it is suggested that hydroponically grown cannabis is becoming more widespread (Hando *et al.*, 1998).

Rumbold and Fry (1998) reported in greater detail on the Melbourne component of the IDRS. They found that among the 254 injecting drug users interviewed almost all had used cannabis. Of those who had used cannabis within the last 6 months, 82% reported using marijuana, 32% indicated using hash and 15% hash oil. The price of cannabis was reported to be stable in the 6 months preceding the survey with a median cost of \$350 per ounce and \$23 per gram. Potency was reported to be high by 74% of the sample and generally considered to be stable or increasing. Cannabis was regarded as either easy or very easy to obtain by most respondents (Rumbold & Fry, 1998).

Forty-two key informants were also interviewed for the IDRS study. This group was drawn from a variety of professions including drug treatment workers, general health workers, needle exchange workers, consumer representatives, outreach workers, youth workers, researchers, ambulance officers, police officers, telephone counsellors and IDU peer educators, all of whom have ongoing contact with illicit drug users. This group reported that use was most prevalent among younger males, often secondary school age. Some saw this as a movement away from alcohol use to cannabis use among young people, especially as cannabis was regarded as relatively accessible due to its price and availability (Rumbold & Fry, 1998).

Key informants regarded the Melbourne cannabis market as being made up of a series of small networks. Hydroponically grown cannabis was reported to be increasingly common and accounted for both an increase in the potency of cannabis and the length of the season during which cannabis is available. It was interesting to note that some key informants believed that cannabis was now more expensive than heroin and that as a consequence some users were opting to use heroin in preference to cannabis (Rumbold & Fry, 1998).

Cannabis treatment attenders

One proxy measure of the level of cannabis-related harm to health in the community include the number of people who seek treatment for cannabis-related problems.

Australia

A national census of clients of treatment service agencies (COTSA) was conducted in 1990. This involved surveying all specialist drug and alcohol treatment services about the characteristics of all clients treated during a 24 hour period. This process was repeated in 1992 and again in 1995 (Torres, Mattick, Chen & Baillie, 1995). In each year agencies were asked to nominate the main drug problem of each client. In some cases, more than one drug problem was nominated per client. The agencies distinguished between clients who were themselves substance users and clients who were relatives/friends of substance users. Only data pertaining to substance using clients is presented here.

Table 1 shows the relative prevalence with which different drugs were nominated in each year. It may be seen that alcohol accounted for approximately half the drug problems mentioned and opiates for a third. Cannabis represented 4.1% in 1990, 6.0% in 1992 and 6.7% in 1995, a significant increase over the course of the surveys (Torres *et al.*, 1995). There was also a significant increase for amphetamines and a significant decrease for alcohol. The authors suggest that the figures for tobacco may in fact be an under estimate of the number of people contacting treatment services in relation to smoking. Many people receive services from general practitioners, natural therapy practitioners and psychologists, none of whom were surveyed. Even those services who were included in the survey may not have seen clients in relation to smoking on the day of the census due to the sessional nature of treatment. It was further found that men were significantly more likely to have a cannabis related problem than women, as were people under the age of 25 compared to those 25 years and older.

Table 1
Principal drug problem of substance users attending specialist treatment for alcohol
and other drug problems Australia 1990, 1992, 1995

	Percentage of substance using clients		
	1990 (n=5583)	1992 (n=5259)	1995 (n=5212)
Alcohol	55.2	51.7	49.3
Opiates	33.7	33.2	33.6
Tobacco	7.9	8.5	4.8
Benzodiazepines	3.7	4.1	4.0
Cannabis	4.1	6.0	6.7
Amphetamines	3.9	4.3	6.5
Polydrug use	10.9	11.2	12.2

Source: Torres et al. (1995)

Victoria

All community based drug and alcohol treatment agencies funded by the Victorian Department of Human Services (DHS) are required to collect sociodemographic and service utilisation data. This information is currently centralised in the Interim Alcohol and Drug Information System (Interim ADIS) (DHS, 1997). The data from

this system represents a measure of treatment seeking for various drug-related problems including those associated with cannabis.

Data from 1996/97 Interim ADIS presented in Figure 15 shows alcohol to be the main drug problem most frequently identified upon registration at an alcohol and drug service, being identified as such by clients in 36.3% of initial treatment episodes. In contrast, in only 10.9% (n= 2,246) of initial treatment episodes did clients report cannabis as their main drug problem. No breakdown was provided of those reporting poly drug use, so it is not possible to determine what proportion of this group nominated cannabis as a problem.

Of course, the information collected by ADIS does not give an indication of the relative prevalence of different drug problems in the wider community, as it only records details of those who actually contact a treatment agency. It is not clear whether people experiencing problematic cannabis use are more or less likely to present for treatment than users of other substances. It should also be noted that ADIS data may be affected by reporting practices. There is no way of knowing to what extent treatment agencies provide full and accurate client information for inclusion on the database.

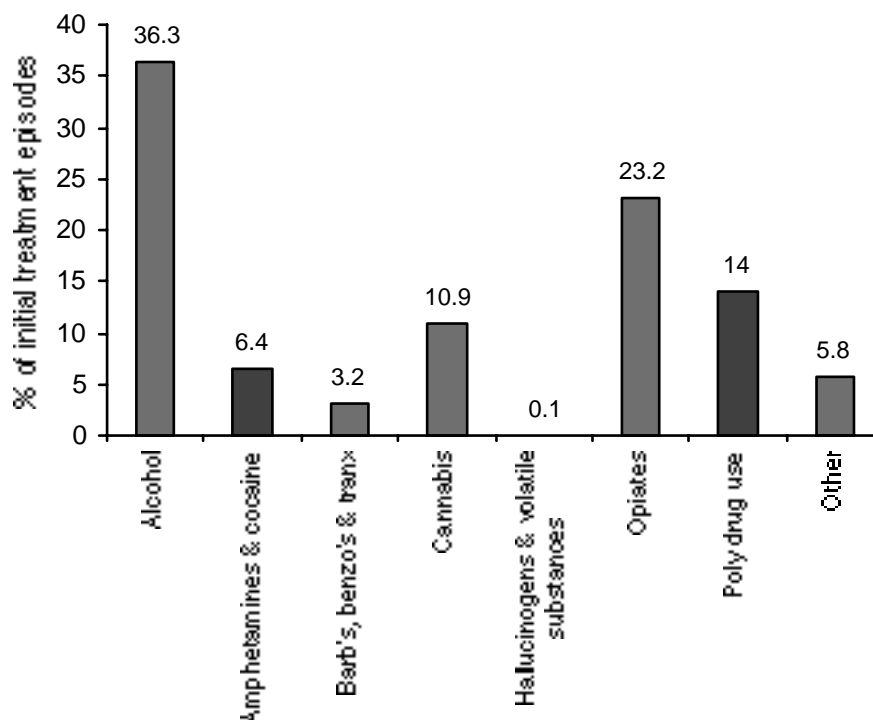


Figure 15: Main drug problem reported by clients at initial registration for DHS

funded drug and alcohol treatment services in Victoria 1996/97.

Source: DHS (1997)

A further indirect indicator of the extent of cannabis related harms in Victoria is the data concerning calls to Direct Line. Direct Line is a 24 hour a day, 7 day a week drug and alcohol information, referral and counselling line available to metropolitan and country callers throughout Victoria. Calls may be received either from a drug user, or from a friend or relative calling about a user. Of the 42,777 calls between 1 September 1996 and 31 August 1997, 9,886 were regarding users aged between 0 and 30 years (63% of all *user* related calls for which age was recorded). Cannabis was mentioned in approximately 30% of calls, heroin in 29% and alcohol in about 14% (Lanagan, 1997). Other details on the characteristics of cannabis-related calls to Direct Line are presented in Appendix 5. The main conclusion from the Direct Line data is that there is a fair amount of concern in the Victorian community about cannabis-related problems, however, due to limitations in the data it is difficult to be certain about the nature of these concerns or their validity.

The health consequences of cannabis use

Hall, Solowij and Lemon (1994) conducted a thorough review of studies concerning the health and psychological consequences of cannabis use. The review identified a number of acute and chronic effects of use, as well as outlining several potential therapeutic applications. Their findings are summarised below. Reference is also made to other sources where appropriate. While cannabis is not a harm free drug, Hall (1995a) has argued that the most probable public health risks of cannabis use itself are likely to be small to moderate in size because of the relatively small proportion of the population who are heavy users.

Acute health effects

Cardiovascular

Among the most pronounced acute physical effects of cannabis intoxication is an increase in heart rate. Within two or three minutes of inhalation (longer if ingested), heart rate may increase by 20-50% and can remain elevated for up to three hours.

Blood pressure may also alter; increasing while the user is seated or lying down and decreasing when standing. The cardio-vascular effects noted are most apparent in novice users, declining as tolerance develops. The effects of cannabis on heart rate and blood pressure may not be a concern to young, healthy people. However, it has been suggested that those at risk of hypertension or heart disease avoid cannabis (Hall *et al.*, 1995).

Psychomotor

Psychomotor functioning may also be impaired as cannabis use can affect motor skills, reaction time and coordination. The degree to which cannabis has a deleterious effect on psychomotor functioning is an important issue because of the dangers that might be associated with activities such as driving and operating heavy machinery when intoxicated. Technical and ethical problems exist in measuring the effects of cannabis intoxication on driving in real life situations. Researchers have instead used driving simulators and closed road circuits to approximate on-road conditions. Such studies have found intoxicated drivers demonstrate impaired lane control. However, reductions in driving speed and risk taking were also noted. The effects of cannabis on driving performance were lower than the effects found for alcohol. Cannabis used in combination with alcohol appeared to have a greater impact on driving than cannabis alone. Participants affected by cannabis appeared to be aware of their limitations and were less prepared to take risks in driving than was the case for those affected by alcohol (Chesher, 1995; Hall *et al.*, 1995).

The degree to which cannabis increases the risk of motor vehicle accidents has also been investigated by determining the level of THC in the blood stream of drivers involved in motor vehicle accidents. Difficulties with such studies include the lack of data concerning THC levels among drivers not involved in accidents, determining whether the presence of THC in the blood stream necessarily indicates intoxication and attributing causation when cannabis has been used in combination with alcohol or other drugs (Chesher, 1995). While the evidence from such studies is equivocal, it has been estimated that driving while intoxicated with cannabis increases the risk of an accident between two and four-fold (Hall *et al.*, 1995).

The Monash University Accident Research Centre undertook a case-control study of fatal single vehicle crashes occurring in a 12 month period between December

1995 and November 1996 to identify risk factors. One hundred and twenty seven crashes within a 200 kilometre radius of Melbourne were investigated and matched with one hundred control cases. The controls were motorists stopped for a random breath test and brief interview. Controls subsequently participated in a follow up interview (Haworth, Vulcan, Bowland & Pronk, 1997).

Many factors relating to both the driver and vehicle were assessed, including alcohol and cannabis consumption. The metabolite carboxy-THC was present in the blood of twenty four (19%) of the hundred and twenty seven drivers involved in a fatal single car accident. However, of those drivers sixteen (84.2%) also had a blood alcohol content in excess of .05%. Only four drivers involved in crashes (3% of the total sample) were positive for carboxy-THC and had not been drinking. Only one control (1%) reported use of cannabis in the last 12 hours (Haworth *et al.*, 1997).

The odds ratio of crashing with cannabis present in the blood stream was 38 times greater than when cannabis was absent. However, the authors explicitly stated this was likely to be an over-estimate of the real risk of using cannabis and driving. Cannabis use by drivers involved in crashes was measured by blood test. This only indicated that cannabis has been used in recent weeks, not that the driver was actually affected by cannabis at the time of the accident. In contrast, cannabis use by control group participants was assessed via self report of use within the last 12 hours and may therefore underestimate actual levels of use within this group. The majority of crash drivers who were positive for cannabis were also over the legal limit for alcohol consumption. The absence of self reported cannabis use in conjunction with alcohol among the control group meant that no statistical test for interaction effects could be conducted (Haworth *et al.*, 1997).

Another method of determining whether cannabis contributes to driving accidents is to undertake culpability analysis. Culpability analysis involves determining to what extent a driver contributed to an accident, taking mitigating factors into account. These include condition of the road, condition of the vehicle, general driving conditions, type of accident, witness observations, obedience of road laws, level of fatigue and the nature of the driving task. The proportion of drivers with a certain drug present in their bloodstream who are also found to be culpable is compared to those who also have the drug present but who are not found to be culpable. This avoids the problem inherent in epidemiological studies of attributing causation to the drug. It

also has the added advantage of allowing culpability to be determined from police records while remaining blind to the actual drug status of the driver involved.

Hunter, Lokan, Longo, White and White (1998) conducted culpability analysis on approximately 2500 South Australian cases. Blood samples were taken from drivers involved in motor vehicle accidents who presented at emergency rooms for treatment. Overall, 22.6% of drivers tested positive for at least one drug including alcohol, while 10.3% were positive to at least one drug excluding alcohol. Cannabinoids without other drugs were found in 7.1% of drivers and in 3.7% in combination with another drug(s). Benzodiazepines were found in 2.7% and stimulants in 1%. The results of the blood test were compared to culpability evaluations based on police records. Drivers were judged to be culpable (54.7%), partly culpable (contributory) (6.2%) or not culpable (39%). Culpability was unable to be determined in 0.1% of cases. Only cases judged to be either culpable or not culpable were included in the analysis (Hunter *et al.*, 1998).

A clear relationship was found between alcohol and culpability; those with alcohol present were more likely to be culpable and the greater the alcohol concentration the more pronounced the effect. Ninety percent of those with a blood alcohol concentration in excess of 0.05% were judged to be culpable, compared with only 53.5% of the drug and alcohol free group. Among those who had only cannabinoids present in their bloodstream, 49.4% were judged to be not culpable, while 50.6% were judged to be culpable. Drivers testing positive for cannabinoids in combination with alcohol were more commonly found among the culpable group (93%), however, the authors suggested culpability in such cases was more likely to be due to the alcohol rather than the cannabinoids. The drugs and drug combinations found to be significantly associated with crash culpability were alcohol, alcohol and cannabinoids, and alcohol and benzodiazepines. Benzodiazepines taken alone approached significance. There was no relationship found between crash culpability and the presence of no drugs or alcohol, cannabinoids only, stimulants only, stimulants and cannabinoids, benzodiazepines and cannabinoids or any other combination of drug type (Hunter *et al.*, 1998).

In recent research on the influence of cannabis on 'real world' driving, Robbe (1994) investigated the dose-response relationship between cannabis and the maintenance of a constant speed and lateral positioning. Measures were made during

three driving tasks: uninterrupted highway travel, following a car at varying speeds on a highway, and city driving. Some of the research was carried out at night. Evidence from Robbe's study confirms findings from previous research that people who have been smoking cannabis exercise greater caution and are therefore better able to compensate for its adverse effects when driving, than is the case for other drugs. Specifically Robbe found that: cannabis smoking impairs fundamental road tracking ability with the degree of impairment increasing as a function of the consumed THC dose; cannabis smoking which delivers THC up to a 300 µg/kg dose slightly impairs the ability to maintain a constant headway while following another vehicle; a low dose of THC (100 µg/kg) does not impair driving ability in urban traffic to the same extent as a 0.04 BAC; the maximum road tracking impairment after the highest dose of THC was within a range of effects produced by many commonly used medicinal drugs and less than that associated with BAC of 0.08. Robbe concluded that while the adverse effects of cannabis on driving performance are relatively small, there may well be driving situations where the influence of cannabis may be dangerous, such as in emergencies where a high demand is put on the driver's capacity to process information, prolonged monotonous driving, when taken with other drugs, and after the oral consumption of cannabis.

Psychological

Short term psychological effects of cannabis use may include deterioration of attention and memory, a sense of euphoria, distortion of time, relaxation and enhanced sensory perception. Feelings of anxiety and paranoia have also been reported among novice users (Hall *et al.*, 1995; Ali & Christie, 1994; Advisory Committee on Illicit Drugs, 1993).

The acute toxicity of cannabis is low and there have been no recorded deaths due to cannabis overdose. It is thought that it would be very difficult to consume a lethal dose of cannabis via conventional routes of administration such as inhalation and ingestion (Hall *et al.*, 1995).

Chronic health effects

The effects of longer term use of cannabis are not as clear. While there is substantial anecdotal evidence from cannabis users and clinicians that prolonged use impacts upon cognitive functioning (eg. attention, memory and concentration), the research evidence remains equivocal (Solowij, 1998). There are a number of problems associated with drawing a causal connection between chronic cannabis use and subsequent health and psychological effects (Hall, 1995; Hall 1998). Measuring levels of lifetime consumption is complex, as it relies upon accurately quantifying the duration, frequency and intensity of use, as well as establishing the THC level of the cannabis used. Alternative explanations for any health effects noted also need to be considered and excluded. Laboratory experiments allow the level of cannabis to be specified and confounding factors to be controlled. However, such studies are often restricted to testing the effects of cannabis on animals, micro-organisms or cells and therefore the results may not be applicable to humans (Hall, 1995b).

Some of the adverse health consequences thought to be *probably* associated with long term cannabis use are increased susceptibility to respiratory disorders, dependence upon the use of cannabis, precipitation or exacerbation of psychosis (including schizophrenia) in susceptible individuals and subtle cognitive impairment (Hall *et al.*, 1995; Hall, 1995; Solowij, 1998).

Effects regarded as *possibly* caused by prolonged cannabis use include cancer of the mouth, pharynx and oesophagus, decreased birth weight and increased risk of leukemia among children of mothers who consumed cannabis while pregnant and 'amotivational syndrome' whereby users under-achieve their educational or occupational potential (Hall *et al.*, 1995; Hall, 1995b).

Respiratory

Respiratory disorders such as chronic bronchitis have been demonstrated to occur at a higher rate among cigarette smokers than non smokers. There is some concern that a similar relationship may exist between cannabis smoking and respiratory problems. The composition of tobacco smoke and cannabis smoke are not dissimilar, if anything, cannabis smoke contains a greater proportion of particulate matter than does tobacco smoke. It is the particulate matter which causes irritation to the lining of the lungs when inhaled. Furthermore, cannabis smoke is generally inhaled more deeply and for

longer than tobacco smoke (although fewer occasions of smoking are likely to occur throughout the day than for tobacco smokers) (Hall, 1998).

Hall, Solowij and Lemon (1994) reported on a series of studies conducted by Tashkin and colleagues who investigated the relationship between cannabis smoking and respiratory function. A group of cannabis smokers confined to a hospital ward for up to 2 months and allowed to smoke as much cannabis as they pleased demonstrated a decline in performance on lung function tests over the course of the study. The difference in performance appeared to vary with the amount of cannabis consumed. It was noted that the lung function of participants remained within the normal range, but that the rate of decline was faster than usual.

A second study involved comparisons between four groups; cannabis only smokers, tobacco only smokers, cannabis and tobacco smokers and non smokers (controls). At the beginning of the project all three groups of smokers evidenced more symptoms of bronchitis than controls. Lung function tests showed that cannabis smokers had poorer function of the large airways, while tobacco smoke appeared to affect the small airways. Follow up occurred three to four years after initial assessment. Again, all three smoking groups had more symptoms of bronchitis than the controls. The group that smoked cannabis *and* tobacco showed impaired function of both large and small airways. Bronchial biopsies conducted on a sub-set of participants showed all three groups of smokers had a greater number of histopathological abnormalities than the non smokers. Greater alveoli inflammation was also noted among smokers. The authors concluded that heavy cannabis smoking may contribute to the development of chronic bronchitis and respiratory tract cancer (Hall *et al.*, 1995).

Hall and Solowij (1998) reported on two longitudinal studies into the effect of cannabis smoking on respiratory functioning; one study found there was no difference between cannabis smokers and non smokers in the rate of decline of respiratory function over an eight year period (Tashkin, Simmons, Sherrill & Coulson, 1997). Counter to this finding was a study which found a greater rate of decline among cannabis smokers compared to tobacco smokers. It was also found that smoking both substances had an additive effect on respiratory function (Sherrill, Krzyzanowski, Bloom & Lebowitz, 1991). Clearly, there is a need for further research in this area.

Dependence

The question of whether it is possible to become dependent on cannabis use has been debated for many years. It was thought for a long time that as cannabis did not produce the effects of tolerance and withdrawal associated with dependence on other substances such as alcohol and opioids, that it was not possible to be dependent on cannabis. However, recent studies reported in Hall *et al.*, (1995) and Hall and Solowij (1998) have indicated that chronic heavy users of cannabis may experience both.

The effects of cannabis intoxication to which regular users may develop tolerance include changes in heart rate and blood pressure, the subjective sense of being 'high', disruptions to cognitive function and impaired psychomotor performance. A greater quantity or potency of cannabis is required for a chronic user to experience these effects. Mild withdrawal symptoms such as restlessness, increased activity, insomnia, sweating, diarrhoea and anorexia have been noted upon cessation of heavy use. There has been a growth in the number of people seeking help from treatment agencies concerning their cannabis use as the potential for dependence has been increasingly recognised (Hall *et al.*, 1995).

While there is some evidence that chronic heavy use of cannabis may result in dependence, it should be borne in mind that only a small proportion of people who ever use cannabis actually become dependent. Anthony, Warner and Kessler (1994, cited in Hall & Solowij, 1998) estimated that approximately 10% of people who try cannabis develop a dependence problem during their using career. This is comparable to the figure who become dependent upon alcohol (15% of those who ever use) and is less than the risk associated with nicotine (32%) and opioids (23%). Furthermore, it has been suggested that a sizeable proportion of people who use cannabis on a daily basis in their late teens and early twenties substantially reduce their use of cannabis by their late twenties. This is similar to the high rate of remission without treatment observed for alcohol dependence (Hall *et al.*, 1995).

Psychosis

There is some evidence to suggest that heavy cannabis use may be associated with acute psychosis in some individuals. Confusion, loss of memory, hallucinations and agitation may be experienced in the short term, although these symptoms do abate upon cessation of use. While there is little evidence to indicate that cannabis use

causes long term psychosis in otherwise healthy people, there is some evidence to suggest that long term use may trigger an episode in already vulnerable individuals (Hall *et al.*, 1995).

At the recent Cannabis and Psychosis Conference in Melbourne (February 16-17, 1999) the 'cannabis psychosis' hypothesis was widely canvassed. It was noted by Hall & Degenhardt (1999) that acute psychotic symptoms caused by heavy use of cannabis may remit after abstinence. However, it is unclear whether such symptoms are a 'toxic psychosis' induced by cannabis, or a functional psychosis. According to Hall and Degenhardt (1999) it is also possible that concurrent use of, for example, amphetamines could cause a toxic psychosis, mistakenly attributed to cannabis alone.

Hall and Degenhardt (1999) suggested that if cannabis-induced psychoses exist, they would require very high doses of THC, the prolonged use of highly potent forms of cannabis, or a pre-existing vulnerability. Cannabis might have a causal link with psychosis in vulnerable people (eg, adolescents and young adults), but the nature of this vulnerability has yet to be identified. Hall and Degenhardt (1999) cited research indicating a linear relation between the frequency of use of cannabis before age 18, and the risk of being diagnosed with schizophrenia by the age of 33. However, it is unclear whether cannabis precipitates schizophrenia, whether it is a form of self-medication of an existing psychosis, or whether the association is because of the use of other drugs, such as amphetamines.

It is understood that the question of an association between cannabis use and psychosis is the subject of another project that has been commissioned by the Drugs and Crime Prevention Committee.

Cognition

In reviewing the available research concerning the effect of cannabis on cognitive functioning in humans, Solowij reached the following conclusion:

The weight of evidence suggests that the long-term use of cannabis does not result in any severe or grossly debilitating impairment of cognitive function. There is sufficient evidence from the studies reviewed ... that the long-term use of cannabis leads to a more subtle and selective impairment of cognitive function.

(Solowij, 1998, p. 109).

Solowij (1998) conducted a series of studies in which event related potentials were monitored during cognitive tasks. It was found that participants who had been using

cannabis for five years demonstrated subtle impairment in memory and attention functions. The author described the impairment as a deficit in the organisation and integration of complex information, with long term cannabis users less able to reject complex irrelevant information. As a consequence, the overall speed of information processing decreased. Furthermore, the degree of impairment appeared to be related to the number of years of cannabis use and reversal after abstinence was only noted in some participants. The deficit associated with frequency of cannabis use did appear to be reversible with abstinence. It was further noted that those participants with a higher IQ demonstrated less impairment, possibly being able to compensate for the effects of cannabis use (Solowij, 1998).

Cancer

It has been posited that cannabis smoking may cause similar cancers to those caused by tobacco smoking due to the composition of the smoke. However, there is a lack of case-control studies concerning cannabis use and cancers of the aerodigestive tract. Hall *et al* (1995) reported on several case studies where clinicians have noted such cancers in cannabis using patients. The cases identified were generally under the age of forty, while tobacco smokers usually do not develop the illness until their seventies. Such studies are limited because the clinicians were not blind to the cannabis smoking status of patients, some patients had other risk factors (eg. tobacco and alcohol use), there were no control groups and no standardised measure of cannabis use was employed. Further research is necessary to determine the nature of any relationship between cannabis smoking and cancer and would need to continue over several years. Cannabis use was uncommon before the 1970s and it is possible that the latency period between onset of cannabis smoking and development of cancer may be longer in some individuals (Hall *et al.*, 1995).

Pregnancy

Studies concerning the impact of cannabis use upon the developing foetus face several problems. Cannabis use is a stigmatised behaviour, possibly more so during pregnancy. This may lead to the under-reporting of use by expectant mothers. Details of drug use during the early stages of pregnancy obtained in late pregnancy or after birth may be affected by inaccurate recall. It may be difficult to isolate the effect of

cannabis use from the use of tobacco, alcohol and other drugs, or from other confounding variables such as nutrition. Furthermore, heavy cannabis use during pregnancy and adverse pregnancy outcomes are both relatively rare events. As a consequence, very large sample sizes would be required to reliably detect any association between the two (Hall *et al.*, 1995).

Despite the difficulties of conducting research in this area, cannabis use during pregnancy has been associated with lower than average birth weight and length. It is thought that this is most likely due to the shorter period of gestation noted among cannabis using mothers. There is also some evidence to suggest that temporary behavioural and developmental effects may be present in the first few months after birth. There is little evidence to support the idea that cannabis use in either parent leads to genetic mutation that could be passed on to any offspring (Hall *et al.*, 1995).

A study of Acute Nonlymphoblastic Leukemia (ANLL) was conducted to identify whether parental exposure to environmental factors such as chemicals, pesticides and radiation was associated with the subsequent development of this cancer in offspring. Cannabis use by the mother was only included as a potential covariate, but was revealed to have a strong association with the development of ANLL. However, it has been suggested that a reporting bias may have operated in this study; mothers who have a sick child may be more likely to consider all possible explanations for the illness and so report cannabis use before and during pregnancy. While cannabis has not been definitively implicated in adverse birth outcomes, its use is generally advised against if trying to conceive and during pregnancy (Hall *et al.*, 1995).

Educational attainment

Hall *et al.* (1995) reported on cross-sectional and longitudinal surveys into the impact of cannabis use on educational performance. A negative relationship was found to exist between cannabis use and years of education. However, no association was found once factors such as low educational aspiration were controlled for. Another study found the relationship between cannabis use and dropping out of school disappeared when nonconformity and lower academic potential were controlled. It appears that cannabis use of itself may not lead to lower academic performance. Non completion of school may be more likely among cannabis-using adolescents who are

already struggling academically, who have low educational aspirations or who display high nonconformity (Hall *et al.*, 1995).

Harms and costs associated with enforcing cannabis prohibition

Enforcement strategies that effectively reduce supply can exacerbate the problems of criminal wealth, violence and corruption. Success in reducing marijuana consumption can worsen drug abuse overall by inducing consumers to seek substitutes, some of which might be more dangerous than their initial choice. The best enforcement strategy overall will be the one that minimizes the sum of the two costs of marijuana: the cost of drug abuse and the costs imposed by criminal markets.

(Kleiman, 1989 as cited in ADCA, 1993)

Apart from the potential harms to the health of the user as a direct result of their cannabis use there are also harms and costs which can result from the legislative or regulatory systems put in place to prohibit cannabis use. These adverse consequences of the application of the laws applying cannabis use include: (1) The financial costs to the community of the application of police, judicial and corrective services resources to prosecute minor cannabis offences such as possession/use, minor cultivation offences and the paraphernalia offences in the jurisdictions where they exist; (2) The social costs to individuals who are convicted of minor cannabis offences in terms of such things as impacts on employment, further involvement with the criminal justice system and restrictions on international travel, as a result of acquiring a criminal record; (3) The overlap of illicit markets for cannabis and other potentially more harmful illicit drugs; and (4) The costs to the community as a result of the involvement of criminal elements involved in the illicit cannabis market including the consequences of organised crime in large scale cannabis cultivation and distribution, and (5) such things as the corruption of police and other public officers.

Any approach to the regulation of cannabis use and supply is going to have associated financial, resource and social costs, as well as benefits. The total prohibition approach is no different in this regard. However, too often, considerations of drug-related harm only take into account the possible health-related harms associated directly with the use of the drug and do not consider the harms associated with enforcing the prevailing system of cannabis prohibition. This section addresses some of the harms associated with enforcing total prohibition of cannabis which need to be considered by policy makers, legislators and the general public.

The financial costs of policing, prosecuting and punishing cannabis users

In Australia during 1997-1998 there were 64,659 cannabis offences detected which constituted 76.9% of all reported drug arrests and infringement notices issued (Australian Bureau of Criminal Intelligence, 1999). Available research suggests that the vast majority of cannabis arrests are for minor offences. Statistics reported by the Australian Bureau of Criminal Intelligence (1999) suggested that 72.6% of all cannabis arrests and infringement notices issued in Australia were for 'consumer type offences' (possession and use offences). Lenton, Ferrante and Loh (1996) found that approximately 90% of all cannabis charges in Western Australia were for minor offences.

In 1994 the Queensland Criminal Justice Commission (CJC) estimated the costs at that time of enforcing minor cannabis-related offences in order to determine the potential savings which would flow from introducing an expiation notice system for minor possession offences and abolishing paraphernalia offences in that state (Criminal Justice Commission, 1994). The cost of prosecuting a case included arrest and processing costs incurred by the police service and the court-related costs incurred by the Magistrates Court, the police prosecutor and the Legal Aid Commission. Court costs varied according to whether the case was dealt with as a guilty plea, and whether the defendant was eligible for legal aid funding. The CJC estimated that the average cost of arrest and police processing a simple cannabis offence was \$55 per case. The total cost per case, depending on how the matter was resolved in the court is presented in Table 2.

Table 2
Estimated Policing and Court-related costs of simple cannabis offences in
Queensland 1994

Type of resolution to case	Policing and court costs	Total cost per case
Guilty plea (duty lawyer)	\$55 + \$107	\$162
Guilty plea (privately funded)	\$55 + \$83	\$138
Not guilty plea (legally aided)	\$55 + \$1,927	\$1,982
Not guilty plea (privately funded)	\$55 + \$1,503	\$1,558

Source: Queensland Criminal Justice Commission (1994)

Based on 1991/92 criminal justice statistics the CJC estimated that the annual total aggregate cost of processing and prosecuting persons charged with possession of cannabis offences was \$2,132,000 and the aggregate cost for cannabis paraphernalia offences was \$463,000. Taking into consideration the costs associated with introducing an expiation notice system the net savings to the Queensland community of introducing an expiation notice system for possession of cannabis were estimated to be about \$735,000 per year (Criminal Justice Commission, 1994).

More recently, the estimated costs of expiation versus prohibition were compared in South Australia (Brooks, Stathard, Moss, Christie & Ali, 1999). Under this modelling costs associated with both custodial and non-custodial penalties were also included. The total cost of the prohibition approach if it had been in place in South Australia in 1995/96 was estimated to be \$2.01 million, while revenue from fines and levies was estimated to be \$1.0 million. In comparison, the total cost of an infringement notice system with a 44% expiation rate, was estimated to be \$1.24 million, with incoming revenues from fees, fines and costs estimated to have been \$1.68 million.

In reviewing the impact of law enforcement costs in California of the *Moscone Act of 1976*, which made the possession of less than one ounce (28 grams) of cannabis a citable misdemeanour, rather than a felony, Aldrich and Mikuriya (1988) estimated that an average of \$US157.6 million per year was spent on cannabis law enforcement in the two years prior to the change. They also concluded that in the ten years after the Act there was an average saving of almost \$US100 million per year which they described as “relieving an overwhelming burden on the state judicial system” (p. 80).

In 1998 the Australian Bureau of Criminal Intelligence noted that:

In 1996-97 cannabis offences constituted about 81% of all drug arrests. This absorbed a significant proportion of resources dedicated to drug law enforcement. In addition, in contrast to most other illicit drug use, there appears to be a comparatively low rate of associated crime and harm to both individuals and the community. The decriminalisation of personal cannabis use and production may greatly reduce both police and legal resource expenditure.

(Australian Bureau of Criminal Intelligence, 1998).

In addition to the costs to the criminal justice system articulated above, it is worth noting that the ‘opportunity cost’ of devoting law enforcement resources to the policing of minor cannabis offences is considerable in terms of the costs inherent in

other law breaking that these police resources would otherwise be pursuing (ADCA, 1993).

The social costs of a minor cannabis conviction

The public health consequences of application of the criminal law against cannabis users may be at least as significant as those that flow directly from the use of the drug. It has been argued that, among other deleterious effects, cannabis prohibition damages community health and erodes civil liberties (Moore, 1994). Christie (1991) noted that:

The recording of a criminal conviction for experimenting with, using, or even cultivating small amounts of cannabis in private is a measure out of proportion to the seriousness of the offence, and leaves large numbers of people with criminal records, who might never otherwise have trouble with the law (p.5).

A criminal conviction has for a long time been recognised as a most severe and often life long harmful consequence of cannabis use (LeDain, 1972) and may also result in less tangible effects such as stigmatisation and self perception as deviant or criminal which may result in escalation of the conduct which is disapproved of, rather than its cessation (Erickson, 1980). Investigations of the social impact of a cannabis conviction on West Australians so charged has found that in that state 2-3 people per day received a criminal conviction for no more serious an offence than possession of cannabis for personal use. Furthermore the bulk of these first offenders are an otherwise non-criminal section of the community (Lenton, Ferrante & Loh, 1996) (see page 146). In a study of the social impacts of a conviction for a minor cannabis offence on first time offenders, a significant minority of the sample were shown to develop less favourable attitudes towards police and there was evidence that many respondents had experienced adverse consequences in terms of employment, further problems with the law, and problems in relationships and accommodation (Lenton, Bennett & Heale, 1999). These social impacts were found to be greater than those experienced by a similar group of cannabis offenders given infringement notices under the South Australian infringement notice system (Lenton, Christie, Humeniuk, Brooks, Bennett & Heale, 1999) (see pages 150 to 153).

The overlap of illicit markets for cannabis and other potentially more harmful illicit drugs

A number of authors have noted that when cannabis users go to the existing illicit market to buy their cannabis, they are exposed to a range of other potentially more harmful illicit drugs which are available for sale (ADCA, 1993, Donnelly & Hall, 1994; Makkai & MacAllister, 1993). Data from a small number of Western Australian studies support this observation. In a study of convicted drug dealers Loxley (1993) reported that 59% of the 33 cannabis dealers said that the main reason for shortages of cannabis had been effective law enforcement against that drug. Furthermore, 15 of the 19 respondents who discussed the issue, said that cannabis buyers might be willing, or persuaded, to buy cheap injectable drugs, such as amphetamine, when they went to buy cannabis and found it too expensive or unavailable.

In a study of the intentions of cannabis users if cannabis were decriminalised Maddox and Williams (1998) found that 43% of their sample of 55 users, of whom 43% were students, reported that they had purchased cannabis from suppliers who offered another illicit drug(s). Just under half (47%) of their sample agreed that 'one of the risks of buying cannabis was that it increases access to other illegal drugs'.

In a study of first time minor cannabis offenders, Lenton, Bennett and Heale (1999) found that 49% of the 51 respondents who had bought cannabis in the previous 12 months said they had either been offered (39%), or asked for (33%), other drugs when they went to buy cannabis in the past year. Of these, 35% also purchased other drugs during that period and all but one of these (94%) had also asked for these other drugs in that period. These results suggest that those purchasing cannabis in the black market were exposed to other drugs, and that many were offered drugs that they had not asked for. Although it was not possible to say from this data whether they had first been offered the drugs by a dealer prior to seeking them out and /or purchasing them.

Costs to the community of involvement of significant criminal elements in the illicit cannabis trade

There is considerable evidence of the involvement of organised crime in large scale cannabis production and distribution in Australia.

While the bulk of cannabis consumed in Australia was produced within the country, in 1996-97 24.29 tonnes of cannabis were detected by Australian Customs,

largely as a result of two multi-tonne cannabis resin shipments, one in Queensland (8 tonnes) and the other in NSW (10.5 tonnes). In 1997-98 the amount detected by customs officials decreased substantially to 38.22 kilograms (Australian Bureau of Criminal Intelligence, 1999).

Across Australia, hydroponic cannabis cultivation is reported as being prevalent, and in Western Australia, police reported that there was evidence that some proprietors of shops selling hydroponic equipment were involved in organised cannabis cultivation. Large scale cannabis cultivators aim to distance themselves from hydroponic growing operations by renting houses, sheds and commercial premises (Australian Bureau of Criminal Intelligence, 1999).

In its 1998 report, The Australian Bureau of Criminal Intelligence described domestic production and sale of cannabis as a 'large scale industry in Australia' with larger scale producers often using methods such as cloning and the use of carbon dioxide to increase the quality and growth rate of crops. The use of 'booby traps', armed guards and large, spring loaded animal traps to protect large outdoor crops was reported by the ABCI as fairly common. They also suggested that there was evidence that some criminal groups were recruiting people for specific tasks such as 'crop sitting' for cannabis plantations as well as renting premises and connecting utilities for indoor hydroponic crops in an effort to avoid detection as increases in electricity usage has been one of the ways that police have used to identify premises which are likely being used for cannabis cultivation. Recent seizures in WA confirm that these practices continue (Mendez, 1999; Peace, 1999).

In South Australia, where evidence emerged of syndicates using numerous growers to cultivate crops under the 10 plant expiable limit, some syndicates were providing horticultural specialists to advise on growing conditions and qualified electricians to bypass the electricity meters. Italian organised crime groups were said to be the major cannabis producers and distributors in Queensland, while in a number of other jurisdictions, organised motorcycle gangs (OMGs) were reported to be heavily involved in these activities, with indications of a national distribution network of chapters of some OMGs. Organised crime groups are said to be using a number of legitimate businesses, including hire cars and the farm produce market, to distribute cannabis (ABCI, 1998).

The ABCI reports that law enforcement against organised crime groups, particularly that which targets principal organisers and members, has had a big impact on their ability to maintain their activities. However, they also note that these operations have not had any noticeable impact on the operation on the cannabis market as a whole, with little evidence of any reduced availability of cannabis as a result of these law enforcement actions (ABCI, 1998, p.21).

Cannabis and police corruption

The widespread use of illicit drugs in the community and the existence of a substantial illicit market which aims to fill the demand for these drugs brings police into close contact with players in the illicit drug trade. The illicit market generates a sizeable cash economy and it is therefore not surprising that some police will become involved in corrupt activities such as: drug use; drug dealing; protection of drug dealers; theft of drugs and/or money and the presentation of false material to court (Criminal Justice Commission, 1997).

Accounts of drug-related police corruption have appeared in New South Wales (New South Wales, Royal Commission into the New South Wales Police Service, 1997), Queensland (Criminal Justice Commission, 1997) and Western Australia (Select Committee into the Misuse of Drugs Act, 1981 (1997)) and are no-doubt prevalent in other jurisdictions. In Queensland, the CJC report *Police and Drugs* provides recent examples of the cannabis-related corruption of police officers. The CJC noted that the recreational use of drugs was widespread among Queensland police, particularly among younger officers and described in detail cases of cannabis use after the alleged theft of cannabis which had been seized by police and held by police for court exhibit purposes. The CJC explained that use of cannabis by a police officer, particularly if done with others, is more serious than that by another member of the public because, in addition to committing the offence themselves, it expressly condones the commission of the offence by the others, and compromises the police officer's law enforcement capacity in the future (p.72). In one operation 'Jetski' in July 1996 a quantity of cannabis estimated to have a street value of \$100,000 was stolen from the Fitch Hatton Watchhouse where it had been stored in a locked safe. CJC investigations later revealed that a relieving police officer and a businessman friend had stolen the cannabis and that they were involved in a drug dealing operation

in the Whitsunday area. In another operation 'Lime' CJC investigations revealed that two police officers were involved in the production of cannabis and had planned to commit break and enter offences in order to acquire prohibited firearms.

Another common allegation is that the amount of drugs an offender is said to have in their possession according to their charge sheet, may be less than the actual amount of drugs seized. The suggestion being that the 'missing' drugs are stolen either for personal use or for re-sale to obtain information from drug users in police operations, or that they are sold for the financial benefit of police. This practice is referred to as 'skimming' or 'taxing' (Criminal Justice Commission, 1997).

Therapeutic applications of cannabis

A number of potential therapeutic applications for cannabis have been identified. Cannabis may be used as an anti-emetic in the treatment of cancer for those patients unable to tolerate conventional drugs. It has also been employed as an appetite stimulant among AIDS patients suffering anorexia. Cannabis is also thought to relieve the intra-ocular pressure experienced with glaucoma (Hall *et al.*, 1995; Advisory Committee on Illicit Drugs, 1993).

A recent paper on the therapeutic use of cannabis concludes that the existing research evidence which bears on the issue is limited and fails to compare cannabis with the best available conventional therapies. While there is evidence of potential therapeutic benefit for cannabis, more research is needed to allow objective assessment of efficacy (Gowing, Ali, Christie & White, 1998). An expert committee has recently been established in Britain by the Royal Pharmaceutical Society. The role of the committee is to prepare guidelines as to good practice in the clinical use of cannabinoids. It is anticipated that this will facilitate research into the medical use of cannabis derivatives (Warden, 1998).

Cannabis use and associated harms - main points

Prevalence of cannabis use

- The estimated overall prevalence of lifetime cannabis use among Australians increased from 12% in 1973 to 39% in 1998.

Cannabis use and associated harms

- Cannabis use within the last 12 months remained stable at approximately 13% between 1985 and 1995 but had increased to 18% in the 1998 survey.
- The reported prevalence of lifetime cannabis use and cannabis use within the last 12 months in Victoria was comparable to that reported nation wide.
- The age and gender profile of cannabis users was similar at state and national level.
- An Australia wide survey of secondary school students revealed that cannabis was the most widely used illicit substance, having ever been used by 36% of students aged 12 to 17. The likelihood of use increased with age, and males were more likely to use than females.
- Drug users in Victoria, as in other states, report cannabis to be readily available and high in potency. A key informant group of Victorian health service providers and law enforcement officers noted that this may be due to an apparent increase in availability of hydroponic cannabis. Some believed that cannabis was now more expensive than heroin and that as a consequence some users were opting to use heroin in preference to cannabis.

Cannabis treatment attenders

- A national census of clients of treatment agencies found that cannabis was the main drug problem for approximately 7% of clients receiving treatment for a drug problem.
- In 1996/97, in about 11% of registrations to Victorian drug and alcohol treatment agencies, the client identified that cannabis was their main drug problem.

Cannabis health-related harms

- It has been argued that while cannabis is not a harm free drug, the most probable public health risks of cannabis use itself are likely to be small to moderate in size because of the relatively small proportion of the population who are heavy users.

The regulation of cannabis possession, use and supply

- The acute physical effects of cannabis consumption include changes in heart rate and blood pressure, impairment of psychomotor functioning and deterioration of attention and memory.
- A 1998 study of 2500 South Australian road crashes found no relationship between crash culpability and presence of cannabinoids. However there is evidence from one study of on-road driving that while the adverse effects of cannabis on driving performance are relatively small, there may well be driving situations where the influence of cannabis may be dangerous.
- Chronic cannabis use is *probably* associated with increased susceptibility to respiratory disorders, dependence, precipitation/exacerbation of psychosis in vulnerable individuals and subtle cognitive impairment.
- Chronic cannabis use is *possibly* associated with cancer (of the mouth, pharynx and oesophagus), decreased birth weight and length, increased risk of leukemia among children whose mothers used cannabis during pregnancy, and under achievement of educational/occupational potential.

The harms and costs associated with enforcing cannabis prohibition

- There is considerable evidence of involvement of organised crime in large scale cannabis production and distribution in Australia which brings with it considerable additional risks to the wider community.
- Law enforcement operations targeted at organised crime groups have not had any noticeable impact on the operation on the cannabis market as a whole, with little evidence of any reduced availability of cannabis.
- The financial costs of police processing and court costs associated with prosecuting minor cannabis offenders under a total prohibition approach are considerable.
- Introduction of infringement notice schemes for minor cannabis offences has been shown to result in significant cost savings.

Cannabis use and associated harms

- There is evidence that those who receive a criminal conviction for a minor cannabis offence can pay a considerable social cost as a result. Commentators believe that this cost may be out of proportion to the seriousness of the offence.
- The adverse social impacts for those apprehended for a minor cannabis offence under an infringement notice system with civil penalties have been shown to be significantly less than those under strict cannabis prohibition with criminal penalties.
- Data from a small number of studies supports the observation that when, cannabis users go to the existing illicit market to buy their cannabis they are exposed to a range of other potentially more harmful illicit drugs.
- The widespread use of illicit drugs in the community and the existence of the substantial illicit market which aims to fill the demand for these drugs brings police into close contact with players in the illicit drug trade.
- Recent investigations into police corruption in Australia have uncovered examples of cannabis-related police corruption which involve large amounts of cannabis and money.

Therapeutic applications of Cannabis

- Potential therapeutic applications of cannabis include acting as an anti emetic in cancer patients, an appetite stimulant in cases of AIDS-related anorexia and reducing inter-ocular pressure in cases of glaucoma.
- While there is evidence of potential therapeutic benefit for cannabis, more research is needed to allow objective assessment of efficacy.

3 Harm reduction

This chapter discusses harm reduction as an approach to drug policy. In particular it:

- Places harm reduction in the context of Australia's national drug policy
- Considers the basic assumptions, rationale and scope of the approach
- Considers issues around harm reduction and law enforcement
- Responds to the more common criticisms of the harm reduction approach
- Considers the application of harm reduction to the legal controls on cannabis use and supply.

The place of harm reduction in the National Drug Strategy

Since the mid 1980s the official aim of Australia's national responses to drug use (The National Campaign Against Drug Abuse, and then the National Drug Strategy) has been one of harm reduction or harm minimisation. Up until recently it has been defined as an approach which aims to reduce the adverse health, social and economic consequences of alcohol and other drugs by minimising or limiting the harms and hazards of drug use for both the individual and the community, *without necessarily eliminating use* (our emphasis) (Department of Health, Housing, Local Government and Community Services, 1993).

The National Drug Strategic Framework 1998-99 to 2002-03 (Ministerial Council on Drug Strategy, 1998) restates a commitment to harm minimisation as 'the key principle' for both licit and illicit drugs. It fails to define harm minimisation as such but states:

Harm minimisation refers to policies and procedures aimed at reducing drug-related harm. Harm minimisation aims to *improve* health, social and economic

outcomes for both the community and the individual and encompasses a wide range of integrated approaches including:

- supply reduction strategies aimed to disrupt the production and supply of illicit drugs;
- demand-reduction strategies designed to prevent the uptake of harmful drug use, including abstinence-oriented strategies to reduce use;
- a range of targeted harm-reduction strategies designed to reduce drug-related harm for particular individuals and communities.

What is harm reduction?

Harm reduction is a pragmatic approach to dealing with drug-related harm. It's adoption as Australia's national approach to this issue during the mid 1980's has been recognised internationally as chiefly responsible for our exceptional success in minimising the spread of HIV among drug injectors, their sexual partners and the wider non-injecting community.

While a strength of this approach has been the development and implementation of practical strategies that work, its weakness has been that the theorising and clarifying of concepts and definitions has, until recently, been largely neglected. This has resulted in some confusion regarding terminology in this area.

Consequently, various terms such as 'harm minimisation', 'harm reduction', 'risk minimisation', and 'risk reduction' are used in the literature. In this document the terms 'harm minimisation' and 'harm reduction' will be treated as synonymous, even though the definitions of and distinctions between these concepts are being debated elsewhere.

Basic assumptions

The harm reduction approach accepts that the use of drugs is a part of life:

People from all walks of life, and of all ages, use drugs for their psychoactive effect and for most of these occasions the drug use is experienced by them as enjoyable.

The range of drugs used varies widely. It includes legal and illegal substances, those which are promoted widely or restricted, those which are naturally occurring and those which are manufactured.

The reasons why people use drugs also vary. They range from the desire to enhance positive experiences to the avoidance of negative ones.

Drugs can be used in ways which are less hazardous and ways which are more hazardous. There is no such thing as a totally safe drug. Equally, it is true that drugs which many regard as 'hard' or dangerous, can be used in ways in which there is minimal, or no harm to the user, those around them, or the wider community.

Rationale: pragmatism, not condoning drug use

If all drug users wanted to stop or reduce their use, all the community would need to do is to offer treatment which is 100% effective. Unfortunately the world is not like this.

Harm reduction rests on the assumption that at any one time many people who use drugs will be unable, or unwilling, to completely stop using, or even cut down their use of drugs.

For other users who want to stop or reduce their use of drugs, strategies such as drug treatment need to be offered. Either complete abstinence or a reduction in the level of use may be set as a treatment goal. It also needs to be noted that many who try to change their drug using patterns don't succeed at their first attempt.

Strategies should be available to all users which help them to reduce drug-related harm to themselves, their families and the general community. People can be helped to stay healthy and alive, whether or not they are trying to reduce or stop their drug use.

While we may not approve of a person's decision to use drugs, we should accept it as a fact.

Adopting a harm reduction approach does not imply support for or condoning of drug use. Governments which adopt a harm reduction approach acknowledge that where risky drug using behaviours continue to occur, they have a responsibility to implement public health and law enforcement measures to reduce the harm that individuals, families and the community as a whole may experience.

The scope of the term

There is general agreement that the main distinction between harm reduction approaches and other approaches which aim to reduce or cease drug use is that under the former, the primary, overall or main goal is to reduce drug-related *harm* rather than *use* per se. Use reduction may be a strategy to achieve harm reduction, but when the goal of an intervention becomes the reduction of use, then a program, policy or intervention should not be described as one of harm reduction (Heather, 1995; Lenton & Midford, 1996).

Wodak and Saunders (1995) have argued that the term harm reduction ceases to be useful when it is applied to *any* strategies which aim to reduce the harm resulting from drug use. For example, the introduction of drug free states (such as exist in some Muslim countries), and policing strategies which aim to eradicate illicit drug use at any cost, may aim to reduce harm, but would not typically be included under an umbrella of 'harm reduction'.

There are also narrow definitions of the term. For example, Single and Rohl (1997) have noted that the term harm reduction originally referred to only those policies and programmes which attempted to reduce the risk of harm *among persons who continued to use drugs*.

It has been noted that narrow definitions have two major disadvantages. Firstly, they deliberately exclude abstinence oriented treatment and supply reduction strategies which might be constructively included under a harm reduction umbrella (eg. abstinence oriented detoxification programmes, cautions for first offenders, custody diversion and court diversion schemes). Secondly, they may be less appropriate for nicotine where, while there are some strategies to reduce harm for tobacco smokers (eg. low tar cigarettes and incorporating use of nicotine impregnated gum to reduce cigarette consumption), most tobacco strategies are aimed at cessation rather than reduced use (Lenton & Single, 1998).

Therefore, as well as aiming at reducing drug-related harm, harm reduction strategies accept that some will continue to choose to use drugs, and do not demand that this use is ceased. Furthermore harm reduction strategies consider the harms that are associated with this ongoing use and aim to reduce them. However, harm reduction strategies also allow that abstinence can be an effective way to reduce harm. Finally, given that harm reduction programmes aim to reduce harm, a defining

characteristic ought to be some attempt to demonstrate that harm has indeed been reduced, or is likely to be reduced. Other strategies which aim to reduce harm, but do not accept these tenets, ought not be described as 'harm reduction' strategies.

A recent definition of harm reduction aims to overcome problems with definitions that were too open or too restrictive:

A policy, programme or intervention should be called harm reduction if, and only if: (1) The primary goal is the reduction of drug related harm rather than drug use per se and (2) Where abstinence oriented strategies are included, strategies are also included to reduce the harm for those who continue to use drugs and (3) Strategies are included which aim to demonstrate that, on the balance of probabilities, it is likely to result in a net reduction in drug related harm.

(Lenton & Single, 1998, p. 216).

However, the weighing up of costs and benefits can never be absolute, particularly when deciding which policies ought to be followed at a societal level, rather than that of the individual. This is even more the case when one considers that even if the different stakeholders could agree on the list of harms and benefits, many would value them differently. There are few examples in public policy where all the possible costs and benefits of any course of action are identified, measured and summed in a simple calculus of harms and benefits. In practice, decisions have to be made and resources allocated following a less than perfect weighing up of costs and benefits of different courses of action. Drug policies based on harm reduction are no different in this respect (Hawks & Lenton, 1998).

Harm reduction principles

Lenton and Single (1998) note that harm reduction policies, programmes and interventions are intended to:

Avoid exacerbating the harm caused by the misuse of drugs by consideration of the impacts on indicators of harm including the unintended harms which may result from the strategy itself. For example, does the enforcement of the criminal law against non-dependent infrequent users of a drug, primarily as a deterrent, outweigh the negative impacts such as the costs of enforcement, the impact of a criminal record, and the marginalisation of large numbers of citizens?

Treat drug users with dignity and as normal human beings. Drug users are seen as responsible for their own behaviour.

Maximise the intervention options. Policies and programmes which aim to reduce harm rather than drug use per se often have the added advantage of opening up for consideration a wider number and variety of intervention options.

Give a high priority to achievable goals. Harm reduction programmes almost always involve a prioritisation of goals, in which immediate and realisable goals take priority when dealing with users who cannot realistically be expected to cease their drug use in the near future. This does not conflict with adoption of abstinence as a way of reducing drug-related harm.

Be neutral regarding legalisation or decriminalisation. Harm reduction should not be equated with the legalisation of drugs. Harm reduction does not dictate or require a specific legislative control system, but rather asks which policies are most effective at reducing specific drug-related harms.

Although many harm reduction proponents may support changes to drug laws, harm reduction *does not require support for decriminalisation or legalisation of drugs*. Indeed there are instances where restricting access to certain drugs through prohibition has been possible and therefore been effective at minimising harm. For example, the prohibition of barbiturates such as Mandrax in Australia and other countries has been successful and has not been accompanied by the emergence of other untoward side effects. However, prohibition is usually only effective where the drug in question is in low demand, when controls are difficult to subvert, and where possible substitute drugs are less harmful or unavailable.

Be very distinct from the 'War on Drugs' approach. Harm reduction does and should imply a different strategic direction from that of national strategies such as the US War on Drugs. It implies a concern with reducing the adverse consequences of drug use for the society which includes those members of society who happen to use drugs. A war on drugs is in fact a war on drug users - people are jailed, not the drugs they use.

A range of strategies

Harm minimisation or harm reduction deliberately uses a wide range of strategies. Some are more appropriate for certain people than others, or more relevant for certain drugs, or types of harm.

For example, random breath testing, lowering of the permissible blood alcohol limit for driving, limiting liquor licensing hours, the establishment of sobering up shelters, and informing people how to measure their alcohol intake, were all done on the understanding that drinking is both enjoyable and risky, and efforts need to be made to reduce the actual harms that result from consuming the drug alcohol.

Methadone treatment has been shown to reduce, but not eliminate, heroin use, crime, injection related risks, and premature death among users of heroin and other opiate-like drugs. The outcomes are better the longer people stay in methadone treatment (Ward, Mattick & Hall, 1994). Needle and syringe distribution and exchange schemes have been shown to not increase the number of drug injectors but rather increase rates of safer, as opposed to risky, injections (Paone, Des Jarlais, Gangloff, Milliken & Friedman, 1995). Diversion schemes where those on drug-related charges can choose treatment, rather than jail, have been successful at rehabilitating some drug injectors and keeping them out of prison, where needle sharing is prevalent.

A range of other strategies for different drugs, different target groups with different problems also exist.

History of harm reduction

Stockwell (1994) noted that while the terminology may be relatively new, 'harm reduction' strategies have probably been employed in some form or other since humans first started using psychoactive drugs. He notes that, for example, the practice of removing weapons from drinkers before they started drinking probably has a long history and has no doubt saved thousands of lives. Furthermore since the mid-19th Century otherwise illicit drugs have been prescribed to dependent users in Britain.

Erickson (1995) has shown that accounts in academic sources of the notion of accepting the reality of substance use, while engaging in practices to minimise the harmful consequences of this use has at least a 20 year history in the alcohol and other drug field.

So while many believe that harm reduction emerged with the advent of the HIV/AIDS epidemic of the mid 1980's, when user advocates and health workers in the UK and Amsterdam began illicit needle distribution schemes, the concepts of

harm reduction have a longer pedigree. Yet it is true that, for many, a shift in thinking about drug policy was accelerated by the need for rapid pragmatic responses to the threat of HIV/AIDS. This was certainly the case in Australia where the National Campaign against Drug Abuse was launched in 1985 in a climate of increasing alarm about HIV/AIDS.

Harm reduction and law enforcement

Law enforcement has a crucial role to play in reducing drug-related harm in the community. Although the application of a harm reduction approach to law enforcement is only beginning to be embraced by operational police, the approach has a great deal of promise for drug law enforcement. While police could be said to have a role in law enforcement simply by limiting the supply of illicit drugs, more applications of harm reduction principles to law enforcement are being developed and trialed. However, there are some challenges to be overcome in this regard.

Challenges for police applying harm reduction principles to enforcement

According to Lough (1998), to many operational police officers, the concept of harm reduction is confusing and contentious. He argues that the application of a harm reduction approach to alcohol and tobacco poses no real problems for law enforcement, as there are usually clear legislative guidelines which distinguish legal practices from those which are not. However, when it comes to illicit drugs, law enforcers are asked to exercise discretion in the name of 'harm minimisation'. This, he explains, poses difficulties for many police who have been inculcated in a 'black and white' approach to law enforcement.

He identifies the organisational constraints on police, societal expectations of police and the attitudes, values and behaviours that police acquire as a result of their job as the main factors which impede the adoption of a harm reduction approach to law enforcement. The organisational constraints stem primarily from a military model of law enforcement with its rigid lines of authority, and bureaucratic ethos characterised by strict rules and regulations which leaves little room for discretion. He believes that the demonisation of illicit drug use is so pervasive that it is almost politically impossible to liberalise existing drug laws in ways that would make harm minimisation truly practiced rather than just preached. Negative societal attitudes to

drug users as deviant are important as police recruits, who are typically even more conservative than the mainstream, emerge from this society. Finally, because of the role that police play in responding to calls from the public and in dealing with drug users who are involved in crime and more likely to be dependent rather than recreational users they get a very jaundiced and stereotyped view of drug use and drug users (Lough, 1998).

A holistic approach to harm reduction based law enforcement

In their national review of drug law enforcement Sutton and James (1996) offered a holistic vision of how drug law enforcement could be fundamentally transformed and made more 'rational' by adopting a harm reduction approach. Police ministers and commissioners accepted the basic thrust of their report and an externally evaluated trial of four pilot projects is now underway in three Australian states (Sutton & James, 1997).

Sutton and James (1996) surveyed 100 law enforcement officers across the country and found that while the stated aims of most relevant law enforcement bodies in Australia was to target major figures involved in the importation, production, financing, and/or distribution of illicit drugs (the 'Mr Bigs'), there was little evidence that this was being achieved. This was supported by the vast majority of data which indicated that people caught up in the criminal justice system were 'users' rather than 'providers' of illicit drugs. It also seemed that most street-level drug law enforcement was conducted by generalist local detectives and uniformed police, rather than drug specialists (i.e. Drug squads) who were more driven by community pressures, complaints from local businesses and attempts to maintain public order rather than specific drug-related goals and policies. Furthermore, most members of specialist drug squads had little or no idea how law enforcement activity impacted on the drug market in terms of price, purity and availability, and few thought it was their business to be concerned how enforcement operations impacted on the behaviour of drug users. Thus, for example, there appeared to be little consideration of how clamping down on the availability of cannabis might lead to the unintended consequence of young people using other more dangerous powder drugs. As a consequence Sutton and James (1996) had found that most law enforcement officers surveyed could not see any role for law enforcers in harm reduction other than in supply reduction and in avoiding

arrests and other high profile police activity in and around needle exchanges, methadone and other drug treatment services. As a result of the above, they recommended that the goals and activities of law enforcement in Australia needed to be realigned to make harm reduction at least as important as targeting and apprehending high level players in the drug trade.

A number of specific recommendations were made by the authors, but in general they suggested that:

- Rigid organisational demarcations between specialist drug law enforcement personnel and generalist police should be broken down and that together these should work with local health and community stakeholders to develop and implement local drug control plans and monitor their impacts.
- Local drug control plans be based on a premise that law enforcement will be more able to re-shape rather than totally suppress illicit drug distribution and consumption, and that the overarching objective should be to ensure that laws were enforced in ways that kept health, welfare and other harms, as well as drug-related crime, to a minimum.
- Local committees of law enforcement, health and drug user representatives be established to set-up and maintain a set of relevant indicators of drug-related harm, to set priorities for local operations and inform strategic decisions when to apply discretion in enforcing drug laws (Sutton & James, 1996; 1997).

Other specific harm reduction strategies in law enforcement

Additionally, as the general community is beginning to accept that eradicating illicit drugs from the community is an unachievable goal, police have been involved in co-operating with other sectors in reducing drug-related harm resulting from those who continue to use drugs.

Cautioning and referral schemes

Cautioning, arrest and referral schemes, and court diversion systems provide mechanisms through which law enforcement and treatment services can work together towards minimising drug-related harm (Hellawell, 1995). Many such schemes are in place in various jurisdictions in Australia and elsewhere (see pages 78 and 90 TO 91).

Providing information about drugs and the law

Less formally, police often have valuable information about the drug scene which could help minimise harm. Results of analysis of drugs seized can help identify hazardous substances, or an abrupt increase in street purity, which may pose a threat to users. When such important and accurate information is non-judgmentally conveyed by police through the media, and those in contact with users, it can be very helpful in reducing harm.

For many young people experimenting with drugs such as cannabis, the most harmful consequence of use could be getting a conviction or a criminal record (Christie, 1991; LeDain, 1972). Many young occasional users of drugs such as cannabis, ecstasy, or amphetamine are unaware of the serious penalties that apply to possession of these drugs or the amounts deemed as sell/supply offences. Police are ideally positioned, through their contact with such users, to give accurate information about such penalties. This approach may be of some use to naive young people who had not considered this potential risk of their drug use. In WA a wallet-sized police drug information card is being trialed which is given to drug users who have contact with police at the time of questioning or cautioning. It includes information about alcohol and drug services, youth services and referral and information services including the local substance users group. It also includes information on safety issues such as calling an ambulance in case of overdose and notes that police won't be called unless ambulance staff are threatened (Brock, 1998)

Avoiding operational policing which compromises drug service agencies

Similarly, there is now a greater level of understanding, among police and the general community, about the importance and effectiveness of methadone programs and needle exchange and provision schemes in minimising the spread of HIV, hepatitis and other blood-borne infections through injectors and to the wider community. Good co-operation between law enforcers and such programs has meant that, in general, such schemes can operate without high profile police surveillance which could quickly scare away clients, rendering the programs ineffective, and maximising the threat to the general community posed by these viruses.

Criticisms and misunderstandings of harm reduction and responses to these

Harm reduction and ‘sending mixed messages’

One criticism of harm reduction approaches is that they send ‘mixed messages’ about drug use to the community. The argument goes that to tell users how to use illicit drugs more safely is confusing.

There are a number of responses to this criticism:

Firstly, life is full of what appear on the surface to be ‘contradictions’ (eg. sponsorship of amateur athletes, freedom of the press and libel laws) and in general the community accept these contradictions with little fuss.

Secondly, public health approaches to a range of issues adopt a harm reduction approach. For example, providing sex education and access to condoms for adolescents is rarely seen as contradictory with messages which are aimed at encouraging delaying onset of intercourse among this group. In many places cigarette packages are sold with labels which say things like ‘SMOKING KILLS’, yet the sale of these products to those over 18 years of age is legal and government raises many millions of dollars in revenue from their sale.

Thirdly, there is some evidence that the general community understand and support harm reduction measures such as the provision of needles and syringes to users of illicit injectable drugs and that levels of support are increased when the rationale for such measures is further explained (Lenton & Phillips, 1997).

Finally, there is the response to the apparent inconsistency of some advocates of harm reduction who propose a relaxing of laws concerning some illicit substances, thus making them more available, while at the same time proposing tightening up on licit substances like alcohol and tobacco. Mugford (1990) argues, similarly to Marks (1990), that there appears to be a ‘U - shaped’ relationship between legal availability and harm. Where legal availability is low the individual and the community can experience a high level of harm such as users resorting to the illicit market, crime, contaminated substances, expensive and intrusive law enforcement. However, at high legal availability, the harms are also great and include advertising and promotion of drug use, high prevalence of under age use, chronic health conditions, accidents and

marital problems. According to Mugford (1990), the lowest levels of harm are to be found at the bottom of the curve, suggesting prevention efforts should be targeted at increasing availability of some illicit drugs, while decreasing availability of some licit drugs. Although only one example of a model aimed at prevention of harm, it serves to illustrate how a very different prevention action plan might emerge from a 'harm' reduction prevention goal than from approaches targeting preventing drug 'use' or 'abuse'.

Harm reduction and increasing drug use

There is a belief among some in the community that implementing harm reduction approaches will result in an increase in drug use. This view is usually expressed along with the view that harm reduction approaches condone or promote drug use.

There are two areas of empirical evidence which serve to refute this claim. Studies of the effect of implementing needle exchanges and other needle provision schemes on the prevalence of injecting drug use, and research on the effect of removal of criminal sanctions for cannabis possession and use on the prevalence of the use of this drug. Some of the evidence on the second area is also addressed in Chapter 7.

Effect of needle provision schemes on rates of injecting drug use

A study conducted for the Centre for Disease Control in the US entitled 'The public health impact of needle exchange programs in the United States and abroad' failed to find any evidence of increases in recruitment to drug injecting nor increases in frequency of drug injecting among those already injecting as a result of implementation of needle exchange programs. However, there was clear evidence that needle exchanges substantially decreased needle sharing and lead to reduced rates of hepatitis B transmission (Lurie, Reingold, Bowser *et al.* ,1993; Paone, Des Jarlais, Gangloff, Milliken & Friedman, 1995).

Effect of removing criminal sanctions for cannabis on prevalence of cannabis use

Single (1989) reviewed the effects of the 'decriminalisation' of cannabis that occurred in the 11 US states since 1973. Comparisons between so called 'decriminalised' and prohibitionist states showed that decriminalisation had not lead to higher rates of current cannabis use in those states. More recently, in Australia the 1996 National

Drug Strategy Household Survey Report 1995 compared rates of cannabis use between the Australian jurisdictions which at that time had removed criminal penalties for possession/use cannabis (SA and the ACT) with those which had not. The report concluded that the decriminalisation of cannabis did not lead to higher rates of use, with SA having among the lowest rates of current users, and rates in the ACT behind both the NT and WA in 1995 (Commonwealth of Australia, 1996).

An analysis of Australian national population survey data indicates that over the 10 year period from 1985 there has been an increase nationally in self-reported lifetime (ie. ever), cannabis use with a greater degree of increase in South Australia than in the average of the other Australian states and territories. However, jurisdictions other than South Australia differed in rates of change, with Victoria and Tasmania having similar rates of increase to South Australia. There was no statistically significant difference between SA and the rest of Australia in the rate of increase in weekly cannabis use (Donnelly, Hall & Christie, 1999). It was concluded that the South Australian increase is unlikely to be due to the decriminalisation which operates in South Australia (Ali, Christie, Lenton *et al.*, 1999).

A comparison of the effects of drug laws on cannabis use across the Netherlands, USA, Denmark and Germany analysed data from 15 separate studies that employed adequate controls (survey year and measure of prevalence) (MacCoun & Reuter, 1997). It concluded that reductions in criminal penalties in the Netherlands from 1976 to 1992 have had limited (or little) effects on cannabis use, but that the increase in commercial access in the Netherlands from 1992 to 1996 with the growth in numbers of cannabis *coffeeshops* (described as ‘defacto legalisation), has been associated with growth in the drug using population, including young people. They note, however, that even with a more liberal policy the rates of cannabis use in the Netherlands are the same as those in the USA which has had a consistently more punitive policy towards cannabis use over the same period. Furthermore, the increase in cannabis use among Dutch youth between 1992 and 1996 was similar to increases in Norway and the USA.

The application of harm reduction to the legal controls on cannabis use and supply

The harm reduction approach applies to the consideration of the application of legal options for cannabis in a number of ways. Firstly, the approach suggests we should consider the legislative options in terms of the reduction of harm, rather than use per se. While the effects of legislative change on prevalence of use is important, it is at least as important to consider the harms and costs associated with cannabis use, the costs associated with the regime of law enforcement, and the comparative costs associated with the use of drugs other than cannabis. As discussed earlier (see pages 40 to 41) it is possible that effective cannabis supply reduction may result in a shift to other drugs like heroin, amphetamines and cocaine which may be easier to conceal and traffic because they are in powder form but may conversely be more risky. For example, these powder drugs may have greater addiction potential or be more hazardous because they can be injected. This document considers the extent and magnitude of cannabis use and the harms associated with it (see Chapter 2), and considers that research which documents the unintended adverse consequences of the legislative models of enforcement (see pages 36 to 40, 109, 146 to 157), the impacts on rates of cannabis use (see pages 152 to 153) and, where available, data on the effects on use of other drugs and their associated harms (see pages 171 to 173).

Secondly, harm reduction suggests that even in the case of abstinence-oriented options such as total prohibition, one ought to consider how well such a model deals with those people who invariably continue to use cannabis and what can be done to reduce the harms on these people. Thus even in models which aim to reduce use and limit supply, we need to acknowledge that some individuals will continue to use cannabis and will require a supply of the drug. Given this, one must then begin to consider which of the different supply options (user self-supply and cultivation, illegal supply of small amounts by non-criminal elements, supply by organised crime elements, regulated government supply, etc.) are the most desirable, or least undesirable in terms of harm. In chapter 4 we consider some of the impacts of the various options in terms of supply to those who will use the drug. Harm reduction suggests consideration of the kind of information and equipment that ought to be available to reduce harm to users under any recommended legislative framework.

Finally, harm reduction recommends that we ought to consider the legislative options and the data which exists on them, to agree, on the balance of probabilities, which model will result in the greatest net reduction in harm. The data which informs decisions about cannabis legislative options is far from complete, but there is data, much from Australian work, which can inform the decision about the best legislative option for control of cannabis use and supply in Victoria. Consideration of international (see Chapter 5) and Australian (see Chapter 6) evidence and experience has been considered in this document.

Harm reduction - main points

What is harm reduction?

- Since the mid 1980s ‘harm reduction’ or ‘harm minimisation’ has been the official aim of Australia's national response to drug use.
- Harm reduction is a pragmatic approach to dealing with drug-related harm which accepts that drug use is a part of life, but does not condone drug use.
- The main goal of a harm reduction approach is to reduce drug-related *harm*, rather than drug *use* per se.
- Harm reduction asserts that strategies should be available to help all users to reduce drug-related harm to themselves, their families and the general community, whether or not they are trying to reduce or stop their drug use.
- Harm reduction does not dictate a specific legislative control system, eg. legalisation. Rather, it asks which policies are the most effective at reducing specific drug-related harm.

Law enforcement and harm reduction

- Law enforcement has a crucial role to play in reducing drug-related harm in the community beyond simply attempting to limit the supply of illicit drugs.
- New holistic approaches to law enforcement aim to re-shape, rather than totally suppress, illicit drug distribution and consumption, with the overarching objective

Harm reduction

to ensure that laws are enforced in ways that keep health, welfare and other harms, as well as drug-related crime, to a minimum.

Responses to criticisms of harm reduction

- Contrary to claims that harm reduction approaches ‘send mixed messages’ there is evidence that the general public understand and support harm reduction measures.
- Studies of the effect of implementing harm reduction strategies, such as provision of needles to drug injectors and removal of criminal sanctions for cannabis possession, indicate that these measures have not lead to increased levels of drug use in the community.

Harm reduction and cannabis regulation

- The harm reduction approach can inform the consideration of legislative options for cannabis use and supply by: putting the emphasis on reduction of harm rather than use per se; encouraging consideration of how the system will impact on those who continue to use the drug as well as non-users; and requiring monitoring the impacts of such a system.

4 Legislative options

This Chapter describes the different legislative models for control of possession and use of cannabis and addresses things to consider regarding the goals of such policies. Specifically it:

- Presents issues to consider when contemplating drug policy
- Presents the seven major legislative and regulatory models for cannabis possession and use
- Provides examples of potential specific goals for such policy.

Points to consider when contemplating drug policy

McDonald *et al.* (1994) noted that the discussion of drug policy needs to be preceded by a discussion of what the policy is intended to achieve, both in terms of rational drug policy in general and cannabis policy in particular. As such they note that it is important to consider the link between policy, legislation and implementation, noting that the development of policy and legislation should take into account the following issues:

- *The arguments that apply to the most appropriate control regime for one drug need not – and often do not – apply to others.* The belief that we must maintain a rigid adherence to one set of strategies for all illicit drugs ignores the reality that we already quite successfully accept inconsistencies and contradictions in drug policy across the board. For example, alcohol and tobacco are freely available and governments generate revenue through taxes placed on their sale, despite the fact that they are responsible for a great amount of harm. We accept that there will be a range of strategies for reducing harms caused by these drugs including restrictions

on their sale to minors and their advertising, warnings on packages, strategies to encourage users to quit or cut down, availability of lower potency forms of the drug etc.

- *Drug policy should be crafted to take into account the different patterns and types of harms caused by specific drugs.* Each drug has its own patterns of supply, demand, consumption, and associated harms and benefits. There may also be differences across different geographical, socio-economic or cultural contexts (Haaga & Reuter 1990 cited in McDonald *et al.*, 1994). It is appropriate therefore, that different control regimes are tailored to the different characteristics of the drug, its use and the context in which it occurs.
- *The details of control regimes are crucial determinants of their outcomes and should not be left undefined.* Not only are there problems in the imprecise definitions applied to terms such as decriminalisation and legalisation, but there are important differences in the particular ways that laws and regulations are written, as well as how they are interpreted and enforced. Police discretion in enforcement greatly influences the impact of laws on the community. Clearly there are many complexities here, and considerations and comparisons of different models of cannabis control and regulation need to consider the details of how respective models are applied in different locations.
- *Any analysis of control regimes should attempt to estimate their effects on consumption levels and patterns of use of cannabis and other potential substitutes.* It is important to know whether changing the system for cannabis control results in an increase, or decrease, in the number of people who ‘have ever’ or ‘regularly’ use the drug, the amount used, and what impact it has on the use of other legal or illegal drugs. However, it does not follow that an increase in numbers of users is a bad thing, particularly if there is an increase in ‘experimental’ or infrequent use but no increase in regular use, or if the increase in the number of cannabis use (or users) serves to reduce the number of people who use other, potentially more dangerous substances.
- *Control regimes should not be considered in isolation from their implementation and enforcement.* In attempting to predict the outcomes for users of various alternatives to the current methods of cannabis control, it is important to specify

the costs and problems of regulation that would accompany them. McDonald *et al.* (1994) note that in all politically viable alternatives there remains the need to license, to tax or to regulate, to ensure that restrictions are observed on such things as sale to minors, use in conjunction with the operation of vehicles or machinery, potency levels, amounts purchased etc. The costs and practical problems of implementation should be included in any debate about control options.

- *Arguments about the consequences of drug use should be separated from arguments about morals.* Arguments about whether the consumption of cannabis for intoxication, pleasure, or avoidance of pain *are acceptable* ought to be separated from arguments based on the relative costs and benefits of cannabis. While both moral arguments and those based on consequences of drug use need to be considered, the argument can become emotionally clouded if concerns about morals are disguised by reference to the harms caused by cannabis use.
- *Options should be evaluated on the basis of evidence of damage.* Policies that seek to impose expensive control regimes on any drug should be based on evidence of harm occasioned by use of the drug.
- *Any policy should recognise the changing nature of the drug problem and be able to change with it.* Additionally, all policies should be reviewed periodically to ensure that they are still relevant to current circumstances and should have in-built capacity for evaluation.
- *Policy should be made in the light of the costs of control as well as the benefits.* Analysis should include social costs to the community generally and to those caught up in the system of control themselves. For example, there is evidence that the application of total prohibition to the possession and use of small amounts of cannabis does not deter use but can undermine support for the law and results in significant negative impacts in employment, further involvement with the law and other social costs (Lenton, Bennett & Heale, 1999).
- *The goals of drug policy should be realistic.* If not, there is a danger that the credibility of the policy can be undermined and/or extreme methods of pursuing policy goals can be justified (Wardlaw, 1992)
- *Discussion of policy options should include a specification of which harms they*

are intended to reduce which also provides a basis for evaluation.

- *Discussion of cannabis policy (and drug policy generally) should recognise the existence of multiple and sometimes contradictory goals.* McDonald *et al.* (1994) point out that it may be necessary to explicitly choose between goals, place them in a hierarchy, or to accept that different goals, strategies and programs may be appropriate for different sub-populations or areas, but not for others.
- *Policies to discourage cannabis use should be shown to be effective or be changed.* Old or new policies should be subject to evaluation and be modified or replaced if they are not meeting the community's needs.
- *The harms caused by the control regimes themselves should not outweigh the harms prevented by them.* It is not enough to say that a policy is 'the right one', or to fail to investigate alternatives when there is evidence of that the policy fails to deter use or is too costly in terms of law enforcement funds, intrusions on civil liberties, violence, corruption and so on. Any social policy should be reviewed when there is reason to believe that the costs of administering it outweigh the harms reduced (McDonald *et al.*, 1994).

Legislative models of for control of possession and use of cannabis

Summarised below are the six main legislative models for cannabis possession and use which were described by McDonald *et al.* (1994) as well as a description of diversion programs. The newer cautioning regulations now implemented or trialed in jurisdictions which have maintained a prohibitionist legislative structure have been described in the *Total prohibition* section. It should be noted, however, that while the summary below covers the major conceptual models other variations or combinations of legislative or regulatory structures for cannabis are possible.

Total prohibition

Under this system, all activity associated with the possession, use, growth, sale or supply of cannabis is considered criminal. Persons found engaging in any such activity may be prosecuted under the criminal law, receive criminal penalties and have a criminal conviction recorded (McDonald, *et al.*, 1994). In Australia, custodial sentences are rarely given for simple cannabis offences, although in Western

Australia, until recently, small numbers of these offenders have received short prison terms for non-payment of fines (Lenton, 1995). Victoria, Queensland, New South Wales, Western Australia and Tasmania all have maintained legislative systems of total prohibition of cannabis. However, during 1998 Victoria introduced a statewide *cautioning system* for cannabis use, and trials of cannabis cautioning have also commenced in and Tasmania and Western Australia. The Tasmanian trial is statewide, while the Western Australian trial is limited to two police districts.

The Victorian *Drugs, Poisons and Controlled Substances Act 1981* (see page 141) expressly prohibits the possession, use, cultivation and supply of cannabis and details the criminal sanctions which may be applied. However, in September 1998, after a 6 month trial in one police district (see pages 141 to 142) a state-wide system of cautioning for minor cannabis offences was introduced. The scheme aims to provide an alternative to court proceedings and associated stigma, reduce the lag between offending and punishment, provide support, assistance and encouragement and optimise informal communication between police and offender. Police can issue a caution for possession/use of less than 50 grams of cannabis. The scheme applies to those 17 years and over with no prior drug offences. The person has to admit the offence and a caution can not be issued to the same person on more than two occasions (Victoria Police Strategic Development Department, 1998).

The six month pilot of the WA scheme which commenced in October 1998 was not completed at the time of writing. It differs from that in Victoria in that its primary aim is to reduce the cannabis use of those arrested, based on a recognition that research suggests that criminal sanctions were not discouraging cannabis use. As such, those cautioned must attend an educational intervention and failure to attend results in a summons being issued for the offence. It aims to net as many people as possible to have the greatest impact on cannabis use. The WA scheme is only available to adults (as juveniles can be dealt with under another Act) and only one caution is permitted. In Tasmania, the system is at the discretion of the police officer and some offenders may be required to make a court appearance for potentially cautionable offences.

Legislative prohibition with an expediency principle

According to this model, cannabis related activities remain illegal. However, police do not investigate or prosecute cases involving the possession and use of small quantities

of cannabis. This model has been adopted in the Netherlands and is also known as 'de-facto decriminalisation' (McDonald *et al.*, 1994). Under the expediency principle which operates across the criminal code the prosecution may decide whether or not to enforce certain laws or to prosecute on the basis of whether this action would be 'in the public interest'. Thus it is guidelines and regulation, rather than legislation through which drug policy is implemented (see pages 90 to 91). While there are national guidelines about the running of the cannabis *coffeeshops* decisions about how they are implemented are made at the local level by a group which usually consists of the mayor, the chief prosecutor and the head of police. This 'three pillars' system allows that cannabis policy and its implementation differs from area to area, and in theory at least, is responsive to local community values. Whilst the guidelines for the retail of cannabis through the coffee shops appear to work very well, there are problems with the control of the wholesale supply to the vending outlets. Attempts to formally regulate wholesale supply have been hampered by the international treaties which expressly prohibit this. As such, systems of informal regulation have emerged which are less than ideal (see pages 90 to 91).

McDonald *et al.* (1994) noted that the pragmatic rationales for Dutch drug policy were: to promote safer methods of cannabis consumption; to limit the sale of the drug to specialist sellers; to limit progression from the use of cannabis to other drugs; to limit the amount of violence in the supply market; and to limit the substitution of more dangerous drugs for cannabis. The authors note that the criminal law was never seen as a solution to the drug problem, but the goal of policy was the prevention and reduction of risks to individuals and societies caused by drug use, with a relationship between those risks and the policy measures to reduce them and as such cannabis is treated differently from other potentially more harmful illicit drugs.

Prohibition with civil penalties

While cannabis related activities remain illegal under this model, no criminal penalties apply to minor cannabis related activities, nor is a criminal conviction recorded. Instead a civil penalty, such as a fine, may be incurred. Speeding in a motor vehicle is an example of another such offence. Incarceration would only be utilised as a sentencing option rarely, for example for non-payment of fines (Sarre, Sutton, & Pulsford, 1989). Activities involving the large scale cultivation, sale or supply of

cannabis generally remain subject to criminal sanctions. The system is often referred to as 'decriminalisation', although this term may be better avoided as its meaning is often confused with that of 'legalisation' (Sarre, Sutton & Pulsford, 1989)

South Australia, the Australian Capital Territory and the Northern Territory have all adopted some form of *prohibition with civil penalties* with respect to offences involving small scale use, possession and cultivation of cannabis. In SA and the NT such penalties also apply to those found in possession of cannabis paraphernalia (such as 'bongs'). Possession of paraphernalia is not an offence in the ACT. The penalties applying in each of these jurisdictions are described in Chapter 6.

The philosophical rationale beneath the change in the South Australian system was a desire to address: the infringement of civil rights that resulted from prosecution of minor cannabis offenders; the stigmatisation and criminalisation that results from applying criminal sanctions to minor cannabis offenders which was seen as out of proportion to the seriousness of the offence. Additionally, the civil penalty option allowed for the maintenance of an official policy which discouraged cannabis use (McDonald *et al.*, 1994). A range of pragmatic reasons for the change included: the anticipated reduction in court costs and police resources; the evidence that prohibition had not reduced levels of cannabis use in the community; that it did not contravene the international treaties; would enable public opinion to be monitored after a liberalisation of laws; and that it would constitute an attempt to separate cannabis from other illicit drug markets (Christie, 1991). One of the criticisms of the SA scheme which emerged in the evaluations which have been conducted of it over the years (see page 130) is the relatively high rate of failure to expiate the fines which has resulted in substantial numbers of people as a matter of course receiving criminal convictions for minor cannabis offences. However, in the ACT and the NT, unlike SA, it is a matter of police and prosecutorial discretion as to the action to be taken in the case of non-payment of the fine. In the ACT this *can include* prosecution for the underlying minor cannabis offence but in the NT the person is simply dealt with as someone with a debt to the court, rather than as someone with a cannabis conviction (McDonald & Atkinson, 1995; Northern Territory Attorney-General's Department, undated).

Sutton (in press) has contended that the SA CEN system has a major flaw because it has been concerned solely with the user, has not considered the application of more

lenient treatment for those on the supply side of the equation. He noted that the legislation which introduced expiation in 1986 also made penalties for commercial production and 'trafficking' the most severe in Australia. These were further extended in 1990 to provide more severe penalties for supply to 'children'.

He believes that this is based on a simplistic dichotomy between innocent 'users' and harmful 'dealers'. He notes that in societies like our own:

- Many young people have used cannabis by the time they reach 18 for many there will be status in being able to obtain 'good supplies'.
- High unemployment among the under 25s is likely to provide powerful economic incentives for becoming involved in dealing to subsidise income derived from welfare, part-time or poorly paid jobs.
- Being a 'drug dealer' may appear to offer considerable status to marginalised young people with little prospect of achievement within more mainstream contemporary society.

He also notes that under the current SA scheme the only way that someone can avoid getting involved with illicit drug markets is by 'growing their own'. This is a problem because cultivation brings increased risk of police detection and confiscation as well as having plants stolen by others. Furthermore White (1990, cited in Sutton, in press) states that younger members of the community often don't control the economic and social resources to maintain a 'space of their own'. As such if they grow plants they are at greater risk of detection or theft and therefore it is likely that many will continue to rely on the illicit commercial market, rather than produce their own. Given this, it is not surprising that even after ten years of expiation, cannabis markets are strong in SA and some people have tried to exploit the ten plant rule by growing ten plants in a number of locations and pooling the harvest to increase the profit (Sutton, in press).

Sutton (in press) believes that the reduction in the plant limit from ten to three, proposed by some among police and government circles, may protect those who are only growing the drug for their own use, but is likely to push cultivation and distribution of commercial quantities more into the hands of dedicated criminal networks. This probably will increase the reliance of cannabis users on markets where a range of other potentially more harmful illicit drugs are on offer (Sutton, in press).

Rather than this approach, Sutton suggests that authorities use the opportunity to undermine criminal network's capacity to dominate cannabis markets by not treating every instance of cultivation which is not for personal use as an activity which must be suppressed but rather by using the cannabis expiation notice and other legal procedures selectively to target activities likely to make the market more harmful. For example these procedures could be targeted at producers with organised crime connections, those also selling drugs other than cannabis, or those making 'excessive profits'. Alternatively police could use discretion (which the current CEN provisions proscribe) to choose not to take action against some users as well as small scale suppliers who do not supply other drugs. While Sutton acknowledges that this would be 'a mighty step' for police and politicians it is a step worth contemplating (Sutton, in press).

Partial prohibition

Under this system personal use activities would no longer be illegal. However, government would maintain the prohibition of cultivation, sale or supply of commercial quantities of cannabis. It is likely that restrictions on legal age for use would apply under such a model (McDonald *et al.*, 1994). A system of Partial Prohibition currently applies in Spain. The recommendations concerning legislative reform for Victoria contained in the report of the Premier's Drug Advisory Council (1996) most closely resembled this model.

Recommendation 7 of the Report of the Premier's Drug Advisory Council (1996) included 4 sub-recommendations not supported by the Victorian Government. These were that the use and possession of small amounts of cannabis (no more than 25 grams) should no longer be an offence (recommendation 7.1), that cultivation of up to 5 cannabis plants per household for personal use should no longer be an offence (recommendation 7.2), that the provisions of the Summary Offences Act should be reviewed to allow police to deal with offensive behaviour occurring under the influence of cannabis and local by-laws be enacted to restrict consumption of cannabis in public places (recommendation 7.4) and that legislation be introduced to expunge all recorded convictions for the possession and use of small amounts of cannabis (recommendation 7.5).

In responding to these recommendations the Victorian Government made it clear that before contemplating the decriminalisation of any cannabis related activities, alternative strategies to reduce the level of cannabis use and cannabis related harms should be implemented and given sufficient opportunity to work. The proposed alternative strategies focussed on education, treatment and law enforcement (State Government of Victoria, 1996).

Regulation

A regulated system is one under which all cultivation, sale and supply of cannabis would be controlled by the government to a greater or lesser extent. Any cultivation or distribution occurring outside the government regulated system would likely be illegal and subject to criminal sanction. However, penalties associated with personal use would not be penalised (McDonald *et al.*, 1994). For example in Australia, as in many other places, the possession and use of alcohol and cigarettes is lawful, although the sale of cigarettes or alcohol to minors is not, nor is the promotion of such substances through certain forms of media. Worldwide, at the present time there is no working example of cannabis regulation. While more typically described as ‘prohibition with an expediency principle’ the under the Dutch system the retail, but not the supply, of cannabis is subject to government regulation (see pages 90 to 91).

McDonald *et al.* (1994) note that there are, however, other examples of regulated availability of drugs in Australia. Opium poppies are grown in Tasmania under government license. Alcohol is sold in licensed premises but there are restrictions placed on a number of aspects of this including the age of those who can purchase it, hours of sale, and in theory, the state of intoxication of those who are able to be sold it. Pharmaceutical drugs are also subject to schedules and regulation, with limitations on availability from those available over the counter in delicatessens and supermarkets to those only available on prescription from a doctor and dispensed by a registered pharmacist.

The Redfern Legal Centre (1996) in their report *Beyond Prohibition* offered one example of what regulated cannabis system might look like. Under this example:

- It would be legal to grow up to 10 plants for personal use, to consume cannabis products and to possess up to 50 grams dry weight of cannabis for personal use. It

would also be legal to supply in small quantities (up to 50 grams) to people aged 18 years and over for no payment.

- It would be possible to grow larger quantities of cannabis under license from a government office of Drug Revenue, and officially sanctioned growers would be able to supply their product to specified cannabis cafes, tobacconists, or manufacturers of other products. There would be a system of grading cannabis, principally on THC content, with differential tax rates according to grade.
- Commercial suppliers would be required to label their products with consumer information concerning weight, THC content, recommended dosage, and approved health warnings.
- Profits from the commercial manufacture or supply of cannabis would be taxed and prices set to encourage safer modes of cannabis consumption. Taxes and fees would be used to administer the regulatory system and fund cannabis education and treatment services.
- Sale to those under 18 years of age would be illegal.
- Cannabis smoking would be banned where cigarette smoking is banned.
- A realistic education campaign on safer cannabis use, hazards associated with driving under the influence and the short and long term hazards of cannabis use alone and in conjunction with alcohol.
- Driving under the influence of cannabis would remain an offence.
- Import and export of cannabis would remain an offence (Redfern Legal Centre, 1996, p. 32-33).

Systems of supply control have emerged in the Dutch context and been suggested in other possible regulatory systems which have been offered (eg. Redfern Legal Centre, 1996). However, the 'backdoor' problem of supply under the Netherlands system, described (see page 90), points to the difficulties in regulating supply under a regulatory system where supply regulations cannot be articulated in law lest they contravene the International Treaties. The exception to this is supply for scientific or medical purposes which are expressly permitted under the treaties.

Free availability

Free availability would involve no legislative or regulatory restriction on the cultivation, sale, supply, possession or use of cannabis. At present, this model does

not operate in any jurisdiction in the world (McDonald *et al.*, 1994). There are very few commodities in many industrialised societies which are not subject to some form of regulations regarding their production, distribution, sale and use. Given the rarity of this model it will not be discussed further here.

Diversion and compulsory treatment

Diversion may either involve diversion *from* the criminal justice system for individuals apprehended for minor cannabis offences, or it may involve diversion *to* treatment for those who chose it or a judged by others (eg. the courts or associated assessment staff) to be in need of it because their use has brought them into contact with the criminal justice system. In Australia, some 'diversion' schemes are seen as alternatives to 'due process' and others seen as 'additions' to it. Alternatives include 'pre arrest diversion' whereby police exercise discretion at the point of apprehension, as well as 'pre-court' diversion whereby if certain conditions are met, the offence is struck off the record. Additions include 'pre-sentence diversion' where the offender is remanded for assessment or treatment, or 'post conviction diversion' where the offenders sentence includes a component of treatment-related supervision (McDonald *et al.*, 1994).

A newer addition to the topography of drug diversion schemes in Australia is the Drug Court. Based on a system operating in the US since the early 1980's, this is a court which has been specifically established to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction or court enforced drug treatment program (Inciardi, McBride & Rivers, 1996). A drug Court System has been implemented in NSW since February 1999, and the model is being considered in other jurisdictions including Western Australia. Because of the large numbers of people who present before the courts with minor cannabis charges in jurisdictions with criminal sanctions it is quite likely that the Drug Court model is one which would not suit minor cannabis offences.

The goals of cannabis policy

Single (1998) has noted that the goals of cannabis policy are multidimensional and involve a balancing of what some might see as conflicting aims. While it could be argued that prohibitionist policies have been in part motivated by other concerns, the

primary justification for cannabis prohibition has been the health and safety risks associated with use. However, even if the purpose of prohibition has been a well-intended attempt to reduce these risks, the primary aim of any cannabis policy should be not only to minimise the harm which resulting from cannabis use itself (essentially health and safety hazards), but also to minimise the harms and social costs (including enforcement costs) that result from attempts to control use.

The inherently dual purpose to cannabis policy entails a balancing of considerations. Attempts to minimise the health and safety risks of cannabis use through rigorous enforcement can escalate the social costs and adverse individual consequences of criminalization. Reduced enforcement and less severe sanctions against cannabis users would address the latter concerns, but could potentially result in greater use and consequently increase the health and safety risks. The existence of health and safety risks per se does not dictate the legislative response. By the same token, neither does the existence of extremely high enforcement costs and adverse social consequences involved in criminalizing large numbers of citizens dictate the appropriate policy. Ultimately, the question is one of selecting the legislative option which provides the best balance between reducing levels of cannabis related harm and at the same time reducing the social costs and adverse individual consequences of interventions which result from the policy .

(Single, 1998).

McDonald et al. (1994) offer a menu of possible sub-goals of cannabis policy which have been mentioned in the literature and the list below is based on their work. Obviously, not all of these alternatives will apply to any one legislative or regulatory option, however, they indicate what some outcome indicators might be for different systems, with the overall dual policy goals of reducing the harms associated with cannabis use and its regulation and enforcement:

- to reduce the total amount of cannabis consumed
- to reduce use among young people
- to reduce the supply of cannabis to the market
- to reduce the consequences of apprehension for first time, or subsequent, users
- to make the penalties which apply to the drug consistent with its capacity to produce harm
- to increase the cost of cannabis to the buyer
- to increase the probability of arrest for a cannabis offence
- to promote safer methods of consumption of cannabis
- to limit use of cannabis to smaller amounts

The regulation of cannabis possession, use and supply

- to separate cannabis from other illegal drug markets and reduce the proportion of the market held by dealers in other, more dangerous, drugs
- to serve as a symbol of community disapproval of drug use
- to make cannabis law more consistent with community values
- to limit the amount of violence in the cannabis distribution system
- to free up the resources of the criminal justice system to pursue other more serious matters
- to limit the substitution of other (more damaging) drugs for cannabis.

Legislative models - main points

- Six legislative models were described in this section. Diversion and compulsory treatment are also briefly discussed:
- *Total Prohibition*: all activity associated with the possession, use, growth, sale or supply of cannabis is considered criminal, eg. Victoria.
- *Legislative Prohibition with an Expediency Principle*: cannabis related activities are illegal. However, cases involving the possession or use of small quantities are not investigated or prosecuted by police, eg. the Netherlands.
- *Prohibition with Civil Penalties*: cannabis related activities are illegal, but criminal penalties do not apply. Instead, a civil penalty such as a fine is administered. Activities relating to large scale cultivation, sale or supply of cannabis remain subject to criminal penalties. Sometimes referred to as 'decriminalisation', eg. South Australia.
- *Partial Prohibition*: personal use activities are not illegal, while cultivation, sale and supply of commercial quantities of cannabis are prohibited, eg. Spain. Note, the legislative model recommended in the Report of the Premier's Drug Advisory Council (1996) most closely resembled partial prohibition.
- *Regulation*: all cultivation, sale and supply of cannabis would be to some extent controlled by government regulation. Activity outside the regulated market remains illegal. In Australia it is this system that applies to currently

licit drugs such as tobacco and alcohol. This system does not apply to cannabis anywhere in the world.

- *Free Availability*: no legislative or regulatory restriction would apply to the cultivation, sale, supply, possession or use of cannabis. It should be noted that there are very few commodities for which a system of free availability applies.
- *Diversion*: this may involve either diversion *from* the criminal justice system or diversion *to* drug treatment (or indeed both). The Drug Courts operating in the US since the early 1980s and in NSW since February 1999 may not be suitable for minor cannabis related offences.
- The primary aim of any cannabis policy should be not only to minimise the harm which resulting from cannabis use itself (essentially health and safety hazards), but also to minimise the harms and social costs (including enforcement costs) that result from attempts to control use.

5 International experience of legislative models

This Chapter describes the international situation with regards to legislative models that apply to minor cannabis offences by:

- Providing a brief summary of the situation in each of fourteen different countries
- Describing the content of the International Treaties and conventions which are relevant to domestic drug policy
- Considering the capacity to apply the various models of cannabis possession other than the prevailing strict prohibition in light of these treaties and conventions.

Despite the overarching framework of the international treaties, each nation develops and applies its own brand of cannabis legislation within a particular socio-legal context. Drug law, like any other law, is also subject to change over time. Cannabis laws have been particularly subject to challenge and modification. Even within the predominant criminal justice model of total prohibition, actual laws, and especially their application, have quite different national profiles as well as varying regional expressions within a particular country. Indeed, this international divergence in cannabis control models is one of the striking developments of the past two decades (Zimmer, 1997).

This Chapter will review the main features of the international experience of cannabis legislation within selected countries. While the lack of a literature in English for many nations limits the readily accessible sources for this report, some recent international cannabis conferences and publications have provided a broader view of national approaches. Personal contacts and solicitations have also provided

‘snapshots’ of the cannabis situation in some lesser studied nations. Nevertheless, those countries sharing an English common law history with Australia are perhaps the most relevant for a more detailed comparison, along with the sentinel nations like the Netherlands that have made significant steps towards a regulatory approach.

These summaries are of necessity brief, and will highlight, where available, the rationale, nature and effects of cannabis legislation within a number of countries around the world. As a *caveat* it should also be noted that most criminal laws do not contain an explicit rationale - it is assumed that the interests of society require the suppression of seriously harmful behaviour and the severe punishment of offenders. Although cannabis (or other drug) use may be considered, at most, an act of self predation, there is rarely any separate justification in the statutes for criminalising drug-related behaviour. It is only in the few nations that either have separated out cannabis from other illicit drugs, or have changed their policy more recently, perhaps as a response to specific court challenges, where we may find a rationale for the approach. Moreover, few evaluations have been conducted of the impact of the laws, and these have been done mainly in the USA and Australia. In order to determine the most effective and least costly sanctions, much research remains to be done. Where evidence is available, it will be mentioned and summarised elsewhere in this report where it is most relevant.

Legislative models in other countries

Canada

Canada’s drug laws have always been criminal statutes, and hence are a federal preserve that cannot be altered by individual provinces. In May, 1997, the *Controlled Drugs and Substances Act* [CDSA] was proclaimed and came into effect after five years in the making. The first major substantive change in Canada’s drug laws since 1961, it retained many of the features of its predecessor, the *Narcotic Control Act* [NCA]. The basic offences of simple possession, possession for the purpose of trafficking, trafficking, cultivation and importation were retained, along with the procedural choice of summary versus indictable for some cannabis charges. The main distinction is that cannabis has been placed in a separate schedule from opiates,

cocaine and other Schedule 1 drugs for the first time, with maximum penalties depending on the amount of the substance.

This separation has resulted in quite a complex penalty structure for cannabis as a 'stand alone' Schedule 2 drug. For simple possession of less than 30 grams of cannabis or 1 gram of cannabis resin (hashish), the offence must be proceeded summarily, and carries a maximum penalty of 6 months imprisonment and/or a fine of \$1000 (same as in the previous NCA). Possession of larger amounts can still be handled as a summary offence (as most have always been) with the same penalties, doubled for a second or subsequent offence. However, the indictable option remains for simple possession, providing a maximum of five years less a day imprisonment. Canadian judges have the discretion to choose from a wide range of sentencing alternatives, including any amount of fine or jail up to the maximum, probation, absolute discharge or conditional discharge. In practice the usual outcomes are fines or discharges, with a concomitant criminal record (Erickson & Murray, 1986; Erickson & Fischer, 1997). A recent pilot project in the Toronto courts has provided first offenders with an option of post-arrest diversion to community service which, if successfully completed, allows them to avoid a criminal record. Clearly an offender going to court for simple possession faces many possible outcomes.

For the distribution offences, trafficking and possession for the purpose of trafficking of less than 3 kilograms of cannabis is proceeded by indictment only, carrying a maximum of 5 years less a day; this potential length of sentence precludes a trial by jury. The same offences but with a larger amount than 3 Kg are punishable by life imprisonment, as is importation; these are the same penalties as for Schedule 1 drugs. Production of cannabis, i.e. cultivation, is subject to a maximum term of seven years imprisonment. While most of those of those sentenced for trafficking offences receive a jail sentence, the majority are for no more than one year unless very large amounts are involved (Erickson, 1990). Cannabis cannot be legally prescribed for therapeutic purposes in Canada at this time, and if it was, no medical source for such use exists.

Canada's legislative framework, then, is one of *total prohibition*, which despite the stated national policy aim of reducing drug-related harm, continues to reflect a primarily punitive approach to both drug use and sale (Fischer *et al.*, 1996; Erickson, 1998). Since all changes in Canadian drug legislation occur at the federal level, and

thus do not vary by province, it has not been possible to compare changes in penalties in different jurisdictions. Some contrast in actual sentencing practices has been documented (Murray & Erickson, 1983) with a lack of demonstrated deterrent effect regardless of penalty imposed. A study of specific deterrence among first time possession offenders (Erickson, 1980) found that 92% were still using one year later.

Colombia

While cocaine dominates drug policy issues in this South American producer country, cannabis is also important for two particular developments. The first is the suppression of cannabis cultivation in the early 1980's, as a response to American pressure (Colombia being a major cannabis producer and exporter to N. American in the 1970's), leading to the shift to coca production in the Andean region and the major expansion of the cocaine export business thereafter (Blackwell, 1988; Ambos, 1997). This has been well documented and will not be elaborated further here.

The second is the 1994 decision of the Colombian Constitutional Court that personal freedom of competent adults includes the right to use drugs (Ambos, 1997). The 1986 criminal law that was challenged (*Estatuto Nacional de Estupefacientes*) imposed penalties of either detention or fine for personal use for up to 20 grams of cannabis and 5 grams hashish (and lesser amounts of heroin or cocaine). A related provision provided for involuntary commitment of the addict for enforced withdrawal. The majority view, in a 5-4 decision, found the criminal prohibition unconstitutional in part on the basis that the rights of third parties were not infringed by illicit drug use, or much less so than by tobacco and alcohol. Hence the primary rights of all citizens (including drug users) to human dignity, personal freedom and action, personal development and equality was upheld.

The Court looked to education as an alternative to prohibition: "Thus a government which respects human dignity, personal independence and unrestricted personal development cannot waive its indispensable duty to educate by replacing it with repression as a sort of consumption control..." (Quoted in Ambos, 1997, p.253). The interpretation of this decision has been that the consumption of drugs is forbidden in all public places, as well as by minors and pregnant women, and by all those considered "incompetent to do business" (ibid. P.252). The Court's ruling appears to set an example for significant decriminalisation of possession, in a *type of partial*

prohibition model. Dealing and trafficking remain criminal offences. It should also be noted that while the Court's decision seemed to be provoked primarily by the provision for compulsory commitment, the ruling encompassed all cannabis products as well.

Denmark

While Denmark has retained criminal and other penalties for possession and sale of cannabis, it has also drawn a legislative distinction between cannabis and other drugs, and also considered the nature of the offence. The *Act on Euphoriant Drugs* is the basic drug legislation, covering the less serious offences, below the level of the *Penal Code* (Jepsen & Laursen, 1998). The AED is a form of administrative law or "special legislation" regulating specific fields like drugs, taxes and the environment. The AED provides for penalties of fine, "lenient" imprisonment or prison for up to 2 years. The usual offences involve possession and small scale transactions. The Penal Code covers the more serious drug offences, such as large scale trafficking and smuggling, and considers "aggravating" circumstances such as selling to minors. In the Code, the drugs considered "particularly harmful and dangerous" would usually exclude cannabis, unless the amounts involved exceed about 10 Kg. (Jepsen & Laursen, 1998). Such an offence could draw a sentence of up to 6 years.

Concerns about street markets prompted recent changes in 1996 to the AED which authorised harsher penalties for repeated selling offences involving dangerous substances; these were explicitly defined to include heroin, cocaine, amphetamine and ecstasy, *not* cannabis. This meant in practice sentences of 3 to 6 months rather than the more common 10-30 days meted out previously. An earlier instruction from the Attorney General, dating from 1969, directed that first time cannabis possession offenders should be warned only. Possession charges, laid only under the AED, are handled by a warning or a fine, if at all, but virtually no such charges are laid. Cannabis is distinguished from other drugs in law and practice.

Other than an ongoing conflict between police and residents in the Christiania area of Copenhagen over several years, where an open cannabis market operated, the Danish situation is best described as *de facto decriminalisation of use and possession of minor quantities* and quite minimal penalties for sales of small amounts (Jepsen,

1996). The tolerance has been achieved by political direction and police practices rather than by actual legislation removing the offences.

France

Drug use in France was not subject to penalty until 1970; since then cannabis use, possession and sale have all been forbidden without distinction from other illicit drugs. The penalties for use are a sentence from two months to a year imprisonment and/or a fine from 500 to 25,000 Francs. Possession, cultivation and sale have a maximum sentence of 10 years and a fine of 50 million Francs. Within the federal law, the head prosecutor decides on enforcement, and practices regarding possession for personal use appear to vary considerably across France's 180 districts with some suggestion of greater tolerance in urban areas (Boekhout, 1997). Clearly, a model of *total prohibition* applies in France.

Germany

Federal narcotics law creates offences of possession, import, export, growing and trafficking, with maximum penalties of 5 years for possession and 10 for trafficking. An important decision of the Constitutional Court in 1994 recognised that the enforcement of the law was flexible enough to permit no or nominal penalties for possession, while upholding the constitutionality of the fundamental prohibition argument (Bollinger, 1997). This has led to considerable regional variation in the prosecution of cannabis possession, with northern states more likely to drop charges of amounts under 30 g, with one state (Schleswig-Holstein) even proposing pharmacy dispensing scheme, while southern states proceed with charges of much smaller amounts. As well, individual city states like Bremen and Hamburg have their own approaches to quite 'open drug scenes' in cannabis.

The medical prescribing of cannabis is not permitted but as in several countries, is being hotly debated (Bollinger, 1997). The German situation seems best described as *one of total prohibition* of cannabis, but with some unevenly distributed movement in the direction of *decriminalisation* of possession of small amounts. More high court rulings are anticipated to clarify whether this step towards liberalisation will be overturned or further encouraged. The appointment of a new federal drug coordinator

from the Green Party is seen as presaging more liberal government initiatives with respect to cannabis, including a pledge to consider a more consistent removal of all criminal penalties of possession.

Hong Kong

Returned to China in 1997 after over 150 years of British rule, beginning with the Opium War of 1842, Hong Kong has the unique history of a colony that was at the heart of an enforced, and legal, opium trade. The Government Opium Monopoly ended in 1945, and opium joined the other prohibited substances including cannabis under the Dangerous Drug Ordinance (Cheung, 1996). This law does not distinguish between different categories of illicit drugs; all are subject to a maximum penalty of HK\$5 million fine and life imprisonment for trafficking and smuggling. Since these crimes carry the death penalty in some south east Asian countries (eg. Malaysia, Singapore), the Hong Kong prohibition may be seen as relatively mild by these standards. While cannabis has not been a commonly used illicit drug, and is not a major concern compared to opiates, neither is it viewed as more acceptable or as a target for liberal reform efforts. It is too soon to know whether the harsher approach of China will impact on Hong Kong's drug policies, which have traditionally emphasised much more rehabilitation and treatment, but at present the established Hong Kong practices and law seem to be continuing. Hong Kong's model of *total prohibition*, albeit a relatively mild one, does not single out cannabis for special attention and unlike many other countries, it is not a topic of controversy.

Italy

Italian laws around cannabis have gone through a number of changes. In 1975, the Radical Party passed a bill making personal drug use non punishable; this law was overturned in 1990. A 1992 referendum to decriminalise personal drug use passed by a slight majority of 52%. Now, personal possession and use of cannabis is subject to administrative sanctions, not criminal ones (eg. suspension of drivers' licenses). Production, sale and delivery remain criminal offences subject to a maximum of 8 years imprisonment. Recent proposals for "group possession", and legalisation of cannabis have been put forward at the federal government level. This situation of

cannabis being unlawful but not criminally punishable seems like a variant of the *prohibition with civil penalties model*.

Jamaica

With the Rastafarian culture and the long history of cannabis use as a herbal and folk remedy, this country has perhaps one of the most enculturated uses of this plant in the world. Since its independence in 1962, Jamaica has been a major cannabis producing country for the North American market. Despite American pressure and tough laws, enforcement has had limited effectiveness, and considerable violence has been related to corruption, competition and suppression efforts (Allen, 1998). Despite crop eradication efforts, marijuana growing remains a major economic opportunity for many in this poor country. Jamaica like many other Caribbean nations has attempted to adopt a *total prohibition* model that is undermined by its own cultural traditions and status as a major cannabis exporter and transshipment port.

Netherlands

This nation has had a policy of separation of ‘soft’ drugs, marijuana and hashish, from the ‘hard drugs’ since amending its *Opium Act* in 1970. Since then, cannabis possession has stayed on the books as an offence, but possessing, growing or selling small amounts (for non-interference, 30 grams, for a single *coffeeshop* transaction, 5 grams) are not offences for detection, arrest or prosecution (Leuw, 1997) The Netherlands handles the supply side issue by allowing *coffeeshops* to sell cannabis as long as other rules involving bans on advertising, no sale of hard drugs, no public nuisance, and no sales to minors are upheld; infraction can result in swift removal of the shop license. A problem with the system, referred to ‘the backdoor problem’ is how the *coffeeshops* are supplied with cannabis. To meet the demand, grower and distributor networks have arisen, and have become organised. These activities are not officially permitted, nor do they provide revenue to government. This has drawbacks for both the suppliers and the regulators. Suppliers express difficulties with the tenuous nature of the business related to its existence under a discretionary containment policy and the degree to which this restricts them in terms of insurance, gaining business loans, taxation, and other aspects. From the regulators perspective

there are difficulties in policing a system which is illegal and informal. According to de Kort (Personal communication, September 1998), in 1994 the Dutch minister of Justice, Mrs. Winnie Sorgdrager, attempted to gazette regulations for the supply of *coffeeshops* but these foundered on difficulties at a national and international level, particularly problems with the international treaties. The availability of a retail option makes the Netherlands the closest example to a *regulatory model* currently in operation.

The Netherlands is unusual in providing a clear public health rationale for its legislation, in particular the separation between 'hard' and 'soft' drugs. Guidelines updated in 1996 specify that: "the policy continues to uphold the distinction made in the *Opium Act* between drugs which entail an unacceptable risk to public health (hard drugs) and drugs which involve less risk (soft drugs). The law distinguishes between these two categories in view of the risk differential and for the purpose of separating the markets for the two types of substances. A distinction is also made between dealers and users. The underlying aim is to prevent cannabis users from being caught up in criminal circles and becoming involved in the traffic in hard drugs."

Further, Section 10, ss 5 of the *Opium Act* lays down a lower maximum penalty for offences, if the quantity is "a small quantity intended for personal use," which in respect of hemp (cannabis) products is 5g. Moreover, the policy is for non prosecution in connection with *coffeeshops* because of an "identifiable common good," in this case public health with respect to separation of the markets and public order. "Hence it is a considered decision not to investigate and prosecute the offences in question, regardless of the resources available."

Some recent data have become available from the first national survey of drug use done in the Netherlands (previously available data tended to be limited to cities and special populations). This study indicated that 15.6% of Dutch people over the age of 12 years had ever used cannabis, and 2.5% had used in the past month. The number reflected in the latter figure is 323,000 recent users, somewhat less than previous Dutch government estimates (CEDRO, 1999). There is also some evidence that while depenalisation in the mid-1970's did not increase levels of cannabis use, some growth did occur later, possibly in relation to the greater access provided by the coffee shop expansion (MacCoun & Reuter, 1997). In part, the Dutch government appears to have reacted with these new guidelines in part to reduce somewhat this availability (for

example, by reducing amounts from 30 to 5 g for personal use, and other measures) without changing the fundamental policy approach first articulated in 1976 .

Poland

Possession and purchase of drugs, including cannabis, was not a crime in Poland until after it left the communist orbit. Even the Law on the Prevention of Drug Abuse of 1985 was a very liberal law. Since then, international pressures combined with internal pressures from medical professionals and the pharmaceutical firms have led to a toughening of its laws and the creation of punishable offences (Krajewski, 1997). While a draft proposed to maintain that a limit of 10gm of cannabis would be exempt from punishment this was not ultimately successful. Thus it appears that Poland has joined the *total prohibition* camp.

Spain

There are no criminal penalties for personal possession and growing of cannabis under 50 grams; administrative fines are still possible, however. Larger amounts can result in a fine and prison sentence of up to 6 years. Like Italy, some initiatives have been taken to allow a type of “group possession,” in the form of a cannabis plantation where participants have the responsibility for their own plants. The legality of this remains unclear, however, as the “Heads” of such a group have been charged with a “transgression against public health.” Spain appears to be an example of a *partial prohibition model, perhaps moving closer to a regulatory one.*

Switzerland

For a period, ‘hemp’ stores have been selling cannabis products in a form of regulated availability as long as they were not presented as a ‘drug.’ For some time, these outlets operated without any legal action being taken, but in the late autumn of 1998 some charges were laid against the proprietors. As well, a referendum of Nov. 29, 1998, which proposed to depenalise all possession, growing and consumption for personal use, was defeated. (It included provisions for a number of drugs besides cannabis.) There is no offence of possession for medical purposes in Swiss law, and this has not been altered. Otherwise, current penalties for possession and sale carry a

maximum of 5 years; however, no immediate legislative changes are anticipated at this time. A report by the National Confederate Cannabis Commission is expected in the Spring of 1999, which will form the basis for further discussion of the regulation and administration of cannabis products by the government. The Swiss system appears to be in a state of flux, moving away from total prohibition, perhaps to a sort of *partial prohibition*, but without a clear new approach as yet defined.

United Kingdom

While the offence of possession remains on the books, carrying a penalty of 6 months imprisonment, the police have the authority to 'caution' offenders, thus avoiding a criminal charge and record. This option is being increasingly used, and constitutes a form of decriminalisation within the context of *total prohibition of availability*. Sale carries a penalty of one year imprisonment. As well, the House of Lords recently recommended that the medical use of marijuana should be legally possible, by transferring cannabis from Schedule 1 to Schedule 2, which would allow doctors to prescribe cannabis and pharmacists to supply it.

United States

Penalties vary considerably from state to state, within the overall context of total prohibition at the federal level. Cannabis in all forms is referred to as 'marijuana' in US data sources. Up to 1980, eleven states 'decriminalised' marijuana possession, retaining penalties of small fines as civil offences or misdemeanours (see Table 3) (DiChiara & Galliher, 1994; Single, 1989). A comparison of use trends in these states compared to those which retained more severe penalties showed no significant differences: use went up in the period of study regardless of type of legal penalties available (Single, 1989). It is not known if the declines that occurred generally in the 1980's were unaffected by the legal penalties in place. No legislative changes towards penalty reduction occurred after 1980, and some attempts were made to reverse the earlier softening; some states increased penalties for both possession and sale. However, Alaska is the only state to have 'recriminalised' cannabis. It did so at a referendum in 1990 after the state legislature had consistently failed to re-introduce criminal sanctions believing that any such statute would be overturned by the supreme

court. The recriminalisation was also unanimously opposed by the Anchorage Bar Association. The case for recriminalisation was neither based on scientific evidence, nor the capacity of the law to actually be enforced, but rather on the symbolism of the move. Thus, recriminalisation was championed by the minority whip of the State Assembly to set ‘an example for our children’ and supported by another campaigner for ‘sending out a strong message against drugs’ (DiChiara & Galliher, 1994).

Table 3
Provisions of cannabis possession decriminalisation laws in those US states which removed criminal penalties

State	Year	Title	Maximum Penalty	Amount of Cannabis
Oregon	1973	Violation	Up to \$100 – first offence	Up to 1oz ⁽¹⁾
Alaska	1975	Misdemeanor	Up to \$100	Up to 1oz ⁽¹⁾ in public
Maine	1975	Civil violation	Up to \$200	‘Usable amount’
Colorado	1975	Petty offence	Up to \$100	Up to 1oz ⁽¹⁾
California	1975	Misdemeanor	Up to \$100	Up to 1oz ⁽¹⁾
Ohio	1975	Minor misdemeanor	Up to \$100	Up to 100grams
Minnesota	1976	Petty Misdemeanor	Up to \$100 – first offence	‘Small amount’
Mississippi	1977	Noncriminal	\$100-\$250 – first offence	Up to 1oz ⁽¹⁾
New York	1977	Violation	Up to \$100 – first offence	Up to 25 grams
N. Carolina	1977	Misdemeanor	Up to \$100 – first offence	Up to 1oz ⁽¹⁾
Nebraska	1978	Civil offence	\$100 – first offence	Up to 1oz ⁽¹⁾

(1) Approximately 28grams

Source: DiChiara and Galliher (1994)

As well, mandatory minimum prison sentences according to amount of drug have been introduced in the 1990's that require long prison terms for selling or conspiracy to traffic. Efforts at interdiction at the borders have been moderately successful (compared to those against heroin and cocaine) due to the bulk of cannabis, and have led to the USA becoming a major marijuana producing country as well. Recent US survey data indicate that 32.9% of the US population aged 12 years and over have ever tried cannabis, and 5.1% were recent (past month) users (SAMHSA, 1997). In 1997, a record high 695,201 marijuana arrests were recorded in the USA (FBI

Uniform Crime Report, 1998), and an estimated 37,000 individuals were incarcerated for marijuana offences in federal, state or local prisons in 1998 (Marijuana Policy Project, 1998).

Conclusion

In summary, the international experience of the global cannabis prohibition shows signs of increased national modification and experimentation with alternatives within this overall framework. While some countries have maintained a strict approach, others have taken steps to depenalise possession, and some have tried various schemes of quasi-regulated availability. It is evident that patterns of use are affected by many more factors than the legal regime, and no clear trends have been demonstrated in related to any fluctuations in legislation, either nationally or cross nationally. The type of comparative analysis documented for Australia elsewhere in this report is the sort of groundbreaking research that is much needed in other jurisdictions.

Impact of international treaties on the capacity to apply models other than strict prohibition

Historically, international drug treaties have influenced cannabis policy in Australia, as in many countries. Cannabis was first included in international drug treaties in the 1925 Geneva Convention on Opium and Other Drugs. Signatories to the Convention agreed to 'enact effective laws to limit exclusively to medical and scientific purposes the manufacture, import, sale, distribution, export and use of cannabis in the form used for medical purposes at the time' (quoted in McDonald *et al.*, 1994, citing South Australia 1978: 34). According to McDonald *et al.* (1994), international pressure, particularly from the U.K., led the Commonwealth to sign the 1925 Geneva Convention and expand Australian drug laws to cover cannabis. In 1926 the Commonwealth prohibited the importation and exportation of cannabis and began to pressure states to adopt criminal laws against cannabis. The states did not perceive cannabis to represent a problem. Nonetheless, all states and territories gradually adopted prohibitionist policies regarding cannabis, beginning with the inclusion of cannabis in the 1928 *Poisons Act* in Victoria, to the proscription of cannabis in the 1959 *Dangerous Drugs Act* in Tasmania.

Currently the three main international drug treaties to which Australia is a signatory are the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (or Vienna Convention). All of these treaties are 'executory' treaties, or treaties of indirect applicability, meaning that provisions must be implemented by the parties by incorporating the agreements into domestic laws (Krajewski, 1999). This requires that signatories must consider constitutional issues existing in a country, and the treaties cannot be applied in a manner which would be unconstitutional under domestic law (Krajewski, 1999). At issue is the extent to which these treaties impinge on the capacity of Australian states and territories to apply non-prohibitionist models of cannabis legislation.

Perhaps the key feature of these treaties concerning the regulation of cannabis and other scheduled drugs is that the signatories are obliged to establish control systems that prohibit the availability of and trade in controlled drugs, except in specific circumstances such as for scientific or medical use. While there are different interpretations regarding the extent to which the treaties require sanctioning of cannabis possession for personal or recreational use, it is clear that sanctions may include non-incarcerative options without violation of treaty obligations. In this section, the relevant sections of the international drug treaties are described and the implications to alternative approaches to cannabis control are discussed.

The 1961 Single Convention on Narcotic Drugs (Single Convention)

The 1961 Single Convention on Narcotic Drugs consolidated previous international drug agreements, and created the International Narcotics Control Board to monitor drugs. It was signed by Australia on March 30, 1961 and ratified on December 1, 1967. Cannabis is included with heroin and other opiates as a Narcotic Drug under Schedule I of the Convention, even though it is not pharmacologically categorised as a narcotic. It is also included under Schedule IV of the Convention with drugs like heroin as a drug having dangerous properties.

(a) Obligations of Signatories regarding Schedule 1 Drugs: The core obligations pertaining to control measures for Schedule 1 drugs are delineated in Articles 4, 33, 6

and 37.¹ The principle aim of the Single Convention, as for all drug treaties, was to restrict production, trafficking and use of controlled drugs, including cannabis products, exclusively to medical and scientific purposes. This is articulated in Article 4 of the Single Convention, whereby parties: “...shall take such legislative and administrative measures as may be necessary... to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.” Thus, the production, trade in and use of controlled drugs for medical or scientific purposes is permitted. This is particularly important with regard to heroin trials. Most observers would interpret the Single Convention as permitting such trials as being for medical purposes.

Article 33 on “possession of drugs” reads in its entirety: “The Parties shall not permit the possession of drugs except under legal authority.” The terms “permit” and “possession” are not included in the definitions given in Article 1, so there is wide leverage for interpretation of this brief section. Given later sections specifying the use of non-criminal sanctions are acceptable alternatives to criminal sanctions, this section has generally been interpreted to indicate that the Signatories must discourage drug possession, but not necessarily by the enforcement of criminal law.

Article 36 (1) requires that Signatories that production, trafficking and possession of controlled drugs be “punishable offences” except when the drugs are used for medical or scientific purposes:

Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally and that

¹ As delineated in Article 2 (1), Schedule 1 drugs (including cannabis) are subject to control measures detailed in Articles 4(c), 19, 20, 21, 29, 30, 31, 32, 33, 34, and 37. Articles 19 and 20 concern reporting requirements of Signatories on production and consumption of drugs. Article 21 specifies limitations on drug production. Article 22 prohibits cultivation of specified drugs, including cannabis, “whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation...the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit market. Thus, Article 22 does not require prohibition of cultivation. Articles 29, 30, 31 and 32 limits manufacture, trade, export and transport of drugs to state enterprises or state-licensed producers. Article 34 concerns the supervision and inspection drug manufacturing.

serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty

Thus, as a signatory to the Convention, Australia would appear to be obligated to treat all drug-related activities, including simple possession of cannabis, as punishable offences.

There are, however, several important qualifications contained within Article 36. First, as with all executory treaties (Krajewski, 1999), the treaty does not override national constitutional limits. Subsection 4 of the Article 36 states that “Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.” Thus, for example, in Germany the treaty would not override the constitutional requirement of “proportionality” in penalties for drug possession, which was established in a recent court decision (Krajewski, 1999). Challenges to drug laws on constitutional grounds have also been made in other countries. When successful, resulting modifications to policy based on constitutional considerations do not violate Article 36(1) of the 1961 Single Convention.

Second, Article 36(1) clearly distinguishes between “punishable” offences and “serious” offences that lead to incarceration. This has generally been interpreted to mean that the less serious “punishable” offences do not require that offenders be incarcerated.

Third, a common interpretation of Article 36 is that the term “possession” is limited to possession for illicit trafficking rather than possession for personal use. It is noteworthy that the term “use” is not included in this section, leaving the meaning of the term “possession” somewhat ambiguous. While some consider this section of the Single Convention as indicating that all possession offences must be criminalised (eg. LeDain, 1972; Woltring, 1990; Fox & Mathews, 1992), the term “possession” as it is used within Article 36(1) has been interpreted to apply only to possession for unauthorised distribution and not simple possession for personal consumption (eg. Noll, 1977; South Australia, 1978; Gilmour, 1995)². Indeed, as we shall see, even the

² The Schaefer Commission in the U.S. similarly interpreted the Single Convention as not requiring criminalisation of possession for personal use. While somewhat more controversial, other consumption-related conduct such as cultivation for personal use and even non-commercial distribution (eg. sharing) may be similarly be interpreted as being excluded from the obligation to impose sanctions in Article 36 (1).

International Narcotics Control Board recognised that some countries may choose this interpretation. As one legal commentator put it:

At a first glance this requirement seems to be quite broad and to include both supply and demand but, in fact it is quite limited. Although these provisions require criminalisation of possession, purchase and cultivation of drugs, their official interpretation established in official commentaries by the UN Secretary General suggests that this requirement does not apply to possession, purchase or cultivation of small amounts of drugs for own consumption.

(Krajewski, 1999, p. 332)

This interpretation was further strengthened by the 1971 Convention (as well as in a 1972 amendment to the Single Convention) introducing the provision of treatment measures as an alternative to punishment for criminal offences, indicating that decriminalisation of possession offences was not only within the letter but also within the spirit of the 1961 Single Convention (Krajewski, 1999).

Article 37 requires that Signatories make drugs and equipment used for the commission of “any of the drug offences, referred to in Article 36” liable to seizure and confiscation. It would appear that Signatories are thus required to seize and confiscate drugs involved in the commission of all trafficking or possession offences. However, some observers have interpreted this section narrowly to only apply to non-consumption related possession offences such as possession for the purpose of trafficking (eg. Gilmour, 1995).

(b) Additional controls regarding Schedule IV drugs: Cannabis is also located in Schedule IV of the Convention. These drugs are subject to the same control measures for Schedule I drugs, with the additional of the provisions in Article 2(5) requiring that:

(i) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included; and

(ii) A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials herewith to be conducted under or subject to the direct supervision of the Party.

Thus special control measures may be imposed, even for possession offences, if the Signatory deems such measures to be “necessary” or “appropriate”. However, Article 2(5) is not mandatory.³

(c) Provision of treatment: While not specifically proposing treatment as an alternative to penal sanctions, Article 38 states that “The Parties shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts”.

Furthermore, the Single Convention contains provisions whereby Signatories may withdraw from the treaty or amend the terms of participation. Article 46 permits Signatories to withdraw from the Convention, while Article 47 allows a Signatory to propose amendments.

Thus, the Single Convention requires Signatories to criminalise illicit drug trafficking, except for medical or scientific purpose and provided that the restrictions are consistent with constitutional procedures of the countries. While there is a requirement that possession and cultivation for personal use be “punishable offences”, they need not be criminal offences subject to imprisonment.

The 1971 Convention on Psychotropic Substances (1971 Convention)

The 1971 Convention, which was signed and ratified by Australia on November 22, 1972, generally involved refinements to the international system of drug control.⁴ For example, the 1971 Convention details procedures for adding new substances to the drug schedules, keeping records, authorising import and export of drugs and the authorisation of transport of controlled drugs in first aid kits of international carriers. The key additional element in the 1971 Convention relating to cannabis policy options is the clear statement that treatment and rehabilitation are acceptable alternatives to punishment. This is contained in Article 20(1) and in Article 22 (1). Section 1 of Article 20 further specifies a commitment to provide treatment to substance abusers:

³ Indeed, for drugs listed in any of the Schedules, Article 39 permits the adoption of stricter national control measures.

⁴ The changes to the Single Convention resulting from the 1971 Convention were incorporated in the Protocol Amending the Single Convention on Narcotic Drugs, 1961, prepared in Geneva in March 1972 and entered into force on August 8, 1975.

“The Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and shall cooperate their efforts to these ends.”

Article 22 (1) specifies that such efforts may be substituted for punishment:

“(a) Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.

“(b) Notwithstanding the preceding sub-paragraph, when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of Article 20.”

The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (or Vienna Convention)

The Vienna Convention, which was ratified by Australia on November 16, 1992, is based on the results of discussions at the 1987 International Conference on Drug Abuse and Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This conference was specifically aimed at the refinement of international control measures against drug trafficking. However, led by the Mexican delegation, a number of drug producing countries argued that further provisions should also be applied concerning drug consumption as a *quid pro quo* since every sales transaction necessarily involves a purchaser⁵ (McDonald *et al.*, 1994; Saint-Denis, 1998).

⁵ The desire for a balanced approach to dealing with drug issues is understandable in light of the strong international pressure on drug producing countries to stem the flow of drugs into consuming countries. Indeed, many authors have described this international pressure, particularly from the U.S., as interfering in the national affairs of these countries. However, it is ironic that Latin American countries pressed for criminalisation of users, given the historically more accepting attitudes towards many forms of illicit drug use (e.g., coca chewing) in many of those countries.

Article 3 of the Vienna Convention concerns the obligation to create criminal offences for certain drug-related behaviour. In addition to the requirement for Signatories to prohibit trafficking and production or cultivation for the purpose of trafficking in Article 3(1), the second subsection, Article 3(2), stipulates a requirement to create criminal offences relating to possession, cultivation, and purchase of narcotics for personal consumption:

“Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.”

As with the Single Convention and the 1971 Convention, the criminal offences must be consistent with constitutional procedures, the use of alternative measures such as education and treatment is explicitly permitted, and there are provisions for withdrawal or amendment of the treaty.

Regardless of the intent, Article 3(2) has been interpreted as not necessarily requiring countries to criminalise possession or cultivation for personal use. As Krajewski notes:

We must further consider why supply and demand are dealt with as separate paragraphs of Article 3? If paragraph 1, dealing with supply – side activities, referred also to (i) possession or purchase and (ii) cultivation, it would have been possible to explicitly specify if it related to own consumption as well as production and distribution. Paragraph 2 would have been extraneous.

(Krajewski, 1999, p. 334)

The answer to this question is that the intent of Paragraph 3(2) was to avoid making personal consumption offences subject to other aspects of the treaty, such as monitoring and reporting requirements (Saint-Denis, 1998). According to the person who drafted this section of the treaty, this is why there is the qualifying phrase “contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention” in Article 3(2).⁶

⁶ According to the person who claims to have drafted this section of the Vienna Convention (Saint-Denis, 1998), the legislative intent was to require that cannabis possession for personal use be treated as a criminal offence but that it not be subject to other aspects of the 1988 treaty which were meant to

However, some countries interpreted this qualifying clause and the fact that there are two different types of offences laid in the different paragraphs of Article 3 differently. According to this alternative interpretation, the prohibited offences must be captured within the earlier treaties, so the interpretation of “possession” in these earlier treaties would apply to Article 3(2). Moreover, the requirements of Article 3(2) are explicitly subject to the limitations that it be within the constitutional limits of the domestic legal system, while Article 3(1) is of a more absolute character, suggesting that the two paragraphs do not refer to the same offences when they refer to possession, purchase or cultivation:

It is an established rule of legal interpretation, that when a lawmaker says something twice in different ways, the meaning of both provisions must be different. In other words the lawmaker never repeats himself unnecessarily.

(Krajewski, 1999, pp. 334-335)

According to this interpretation, despite the impression that Article 3(2) appears to require criminalisation of consumption related offences, the very fact that there are two similar but not identical subsections of Article 3 provides *prima facie* evidence that they refer to two different requirements with respect to criminalisation of these offences.

Thus, there is an alternative interpretation that the requirement to make possession a criminal offence in Article 3(2) would only apply to possession offences relating to drug trafficking, and it does not necessarily apply to possession or cultivation for

apply only to trafficking offences:

“Our concern was that this convention was initially thought of as dealing primarily with the seller of the drug. We had to come up with a method which would accommodate the Mexicans and other Latin countries on one hand, but also would not impose upon the offence of possession or consumption all of the measures that are contained in here, things such as extradition and mutual legal assistance and so on.

“In fact, paragraph 2 was the solution that the experts provided. I have to tell you that paragraph 2 is actually my humble contribution to this convention, because I conceived of an idea where we could have an obligation to create an offence regarding possession, such as was requested by Mexico, but by extracting it from the main provisions dealing with trafficking, we could isolate the offence of possession and thus not have the remainder of the provisions of this convention apply to possession for personal consumption. All of the remaining provisions of this convention would apply to paragraph 1 of Article III.

“If you look throughout the convention, by and large, the only references when we talk about offences are offences included in paragraph 1 of Article III. That article deals with things like production, the sale, the transport, the types of activity normally found in commercial trafficking, if you wish.

“There is not doubt that the intent was to criminalise the concept of consumption or possession for personal use...” (Saint-Denis, 1998)

personal use. The fact that the 1988 Convention was explicitly meant to deal exclusively with drug trafficking is also cited as evidence in favour of this viewpoint.

The interpretation that none of the drug treaties require the criminalisation of cannabis possession or cultivation for personal use has been adopted by many authors, special drug commissions and national governments (McDonald *et al.*, 1994; Krajewski, 1999). Indeed, the International Narcotic Control Board itself recognises that “there are a number of different interpretations that can be placed on the provisions of the Vienna Convention as they relate to personal consumption activities” (INCB, 1992, p. 4). It further notes that Signatories to the Vienna Convention:

may take the view that they are not required to establish such activities as criminal offences under law. The basis for this view appears to be that, since obligations relating to penal provisions appear among articles relating to illicit traffic, the obligations only apply to cultivation, purchase or possession for the purpose of illicit trafficking.

(INCB, 1992, p. 6)⁷

In sum, the international drug treaties requires Signatories to criminalise activities relating to illicit drug trafficking for any purpose other medical or scientific use, subject to their constitutional limitations. Although possession and cultivation for personal use must be “punishable” offences, it is not clear if these must be criminal offences. It was the intent of drafters of the Vienna Convention to require the criminalisation of possession and cultivation for personal use, but there is a widely-held alternative interpretation which holds that possession and cultivation for personal use are not required to be criminal offences.

Even if it is assumed for the moment that the Vienna Convention does indeed require that cannabis possession and cultivation for personal use must be criminal offences, there are no requirements regarding enforcement in any of the treaties, and the use of treatment and rehabilitation as alternatives to punishment is explicitly recognised. The Commonwealth Department of the Attorney General in Australia noted that none of the drug treaties require criminal *proceedings* (italics added) for personal consumption offences. In a letter to the Queensland Criminal Justice

⁷ Not surprisingly, M. Saint-Denis (personal communication, 1998) claims that this interpretation by the INCB is incorrect.

Commission (Criminal Justice Commission, 1994), the Attorney General's office concluded that expiation schemes are therefore not in violation of treaty obligations. Expiation avoids criminal proceedings, but cannabis possession is still a criminal offence. Thus, even with a strict interpretation of Article 3(2) of the 1988 Convention, there is no violation of treaty obligations. And even without an administrative procedure like expiation as an alternative to criminal proceedings, it is possible to have a *de facto* decriminalisation yet avoid treaty violations by having a criminal law that is simply not enforced, as the Dutch have amply demonstrated.

Implications for cannabis policy options

At issue is whether and how international treaty obligations impinge on Victoria's ability to respond to cannabis problems with non-prohibitionist policies. Clearly, the substitution of civil penalties such as fines for criminal penalties for cannabis possession and cultivation for personal use would not be viewed as violating international drug treaties. Signatories to the drug treaties may impose minor penalties such as fines or censure rather than require imprisonment for drug users.

The removal of all penalties, both civil and criminal, for possession and use and perhaps other minor cannabis offences has been termed *partial prohibition* in the Australian context (McDonald *et al.*, 1994). In other contexts, this option is sometimes referred to as 'decriminalisation'. On first reading, this would appear to violate the requirement that all drug offences in Article 36(1) of the Single Convention be "punishable" and the requirement in Article 3(2) of the Vienna Convention that drug offences be made criminal offences. However, these two key sections of the drug treaties can be interpreted as not including possession offences relating to personal use. The International Narcotic Control Board explicitly recognises that countries may interpret the treaties in this manner. In any case, it would clearly be within the requirements of the treaties to create criminal offences of cannabis possession and/or cultivation for personal use without providing for penalties. The treaties expressly permit the use of treatment, education and rehabilitation as substitutes for the application of criminal or civil penalties. Alternatively, Victoria could retain a criminal offence for possession and cultivation for personal but choose not to enforce these offences.

The other major policy approach, termed the *regulation* option (McDonald *et al.*, 1994), would provide users with a legal source of supply for personal use from government sources or from licensed producers. This approach ranges from various proposals for regulated commercial sale to a strict government monopoly over trade and retail of cannabis products. While there is clearly a great deal of leverage for the government to provide drugs or license others to provide drugs for scientific or medical purposes (Woltring, 1990), the treaties prohibit the provision of controlled drugs such as cannabis for personal and recreational use. Cannabis could be provided to users under a regulatory scheme using a medical model, but government production or licensing of production of cannabis for personal use would require that laws against production and trade remain in place without being enforced, as in the Netherlands. The removal of criminal laws against production and trade in controlled drugs would represent a violation of the treaties.

The removal of all restrictions on production and trade in cannabis, the *free availability* model (McDonald *et al.*, 1994), has been described as the “total deregulation permitting the availability of drugs for purely recreational use” (Woltring, 1990: 19). This would clearly be in violation of treaty obligations, and require that Australia amend or withdraw from the treaties. However, as noted earlier, the treaties do not require enforcement, so even this option is available if criminal laws against production and trade are retained but not enforced.

Thus, considerable leverage on adopting non-prohibitionist models of cannabis control is available. Expiation schemes and the removal of civil and criminal penalties do not violate the treaties. Even with a strict interpretation of the treaty requirements, it would be possible to institute regulatory models by retaining criminal offences against production and trade in controlled drugs but adjusting enforcement practices and priorities. The well-known Dutch experience in providing cannabis in licensed cafes despite retaining a criminal law against cannabis possession and trade illustrates the manner in which non-prohibitionist approaches to cannabis can be adopted without violating international treaty obligations.

The international experience of legislative models - main points

- It is possible to divide the laws concerning the possession and use of small amount of cannabis operating in several countries according to the legislative models described in chapter 4:
 - Total prohibition: Canada, Germany (although some states are moving towards decriminalisation), Hong Kong, Jamaica, Poland, USA (at Federal level, decriminalisation exists in some states)
 - Partial prohibition: Colombia, Spain (although moving closer to a regulatory option), Switzerland
 - Prohibition with an expediency principle: Denmark, the Netherlands (although demonstrates some aspects of regulatory option)
 - Prohibition with civil penalties: some US states
 - Prohibition with cautioning: UK.
- The international experience of the global cannabis prohibition shows signs of increased national modification and experimentation with alternatives within this overall framework. While some countries have maintained a strict approach, others have taken steps to depenalise possession, and some have tried various schemes of quasi-regulated availability.
- It is evident that patterns of use are affected by many more factors than the legal regime, and no clear trends have been demonstrated in related to any fluctuations in legislation, either nationally or cross nationally. The type of comparative evaluation which has been conducted in Australia is much needed in other countries.
- The 1925 Geneva Convention on Opium and Other Drugs was the first such convention to include cannabis.
- International pressure was applied to Australia to sign the Geneva Convention and to pass laws regulating cannabis.
- The various states and territories enacted laws prohibiting cannabis between 1928 (Victoria) and 1959 (Tasmania).

The regulation of cannabis possession, use and supply

- **Australia is currently signatory to 3 main international drug treaties; the 1961 Single Convention, the 1971 Convention on Psychotropic Substances and the 1988 United Nations Convention (the Vienna Convention).**
- **The key feature of the treaties is that signatories are obliged to establish control systems that prohibit the availability of controlled drugs, including cannabis, except for scientific or medical use.**
- **There are varying interpretations as to the extent to which the treaties require cannabis use or possession to be sanctioned. However, it is clear that non-incarcerative, and indeed non-criminal sanctions, do not violate treaty obligations. An additional element of the 1971 Convention on Psychotropic Substances is that treatment and rehabilitation are acceptable alternatives to punishment for cannabis related offences.**

6 Australian experience of legislative models

This Chapter provides evidence which bears on the Australian experience of applying various legislative models by:

- Presenting the findings of research into the social impacts of the various legislative options which apply to cannabis in different Australian states and territories
- Summarising the laws and the available statistics on their application for the different states and territories.
- Summarising the results of the recently completed research into the Cannabis Expiation Notice Scheme of South Australia.

Research on the social impact of different legislative options relating to cannabis in Australia

In 1994 the Ministerial Council on Drug Strategy (MCDS) commissioned a study of the social impact of different legislative options relating to cannabis. Phase One of the study was conducted in 1994-1995 and involved the collection of police and lower court data concerning minor cannabis related offences in all Australian jurisdictions. The results of the Phase One research were presented in a report to the MCDS in 1995 (McDonald & Atkinson, 1995).

In their overview of the literature McDonald and Morrisson (1995) observed that there were many gaps and that further research was needed. They pointed out that cannabis users on the whole appear to be a law abiding group of offenders in all aspects apart from their use of cannabis, although they speculated that the enforcement of laws which apply to cannabis may provide an impetus for further

offending. They also noted that while the impact of cannabis use itself on the educational attainment and employment stability of users has often been discussed and debated in the literature, rarely had the effects of the impact of the legislative sanctions which apply adequately evaluated. Christie-Johnson (1995) attempted to do this by investigating official sources such as government departments, newspaper articles and departmental records. She concluded that the legislative option applied to minor cannabis offenders in a given jurisdiction had little impact on users school education or public sector employment. However, she also noted that this view did not necessarily reflect the perspective of the offenders caught up in the criminal justice system and noted that longitudinal, preferably prospective research, is required to answer more completely the impact of a minor cannabis conviction on education and employment.

Following the Phase One research, the Commonwealth Department of Health and Family Services funded the second phase of the research which entailed a comparison of the social impacts of the two main models found in Australia for dealing with minor cannabis offences: total prohibition, and prohibition with civil penalties. Western Australia was chosen as an example of a total prohibition approach to minor cannabis offences, and South Australia, with its Cannabis Expiation Notice (CEN) scheme, was chosen as the longest running example of prohibition with civil penalties. While the CEN scheme in South Australia had been the subject of previous research studies (Christie, 1991; Ali & Christie, 1994; Donnelly, Hall & Christie, 1995; McDonald & Atkinson, 1995), none of those studies had involved such detailed investigations as were planned for the second phase of the Social Impacts Study.

Below we summarise data from this research which firstly addresses cannabis offence data in each jurisdiction and secondly summarises the phase two research which compared the social impacts of an expiation notice in SA with a conviction for a minor cannabis offence in WA. Where possible, cannabis statistics data unavailable at the time of the Phase One research (McDonald & Atkinson; 1995) have been supplemented by more recent sources such as Phase Two data and data collected specifically for the current report.

Cannabis laws and offence statistics for the Australian states and territories

There have been a number of recent changes in the legislative and enforcement models applied to minor cannabis offences in various Australian jurisdictions. These are summarised in Table 4.

McDonald and Atkinson (1995) found that as both the exact legislation and the collection practices operating in each jurisdiction varied, caution must be exercised in comparing states and territories. Given this caveat we have adopted their convention and defined minor cannabis offences as those offences involving the illegal use, possession and/or cultivation of personal scale amounts of cannabis. Paraphernalia offences are also included as minor offences in those jurisdictions where such an offence existed. The term ‘minor cannabis offence(s)’ refers to all four activities, unless otherwise stated.

The regulation of cannabis possession, use and supply

Table 4
Lowest scale offence for possession of cannabis: Australian jurisdictions February 1999

Juris-diction	Quantity Threshold	Criminal Offence	Maximum Penalty
STRICT PROHIBITION			
WA	<25 plants <100 grams cannabis <20 grams cannabis resin <80 joints	Yes	\$2,000 fine or 2 years imp. or both. (implements \$3,000 fine or 3 years imp. or both) Trial of cautioning + education session for 1st offenders (from Oct 1998)
NSW	Cannabis leaf <200 grams	Yes	2 years imp. or \$2,000 fine or both
QLD	<500 grams, or where plants, the aggregate weight of the plants is <500 grams, 100 plants	Yes	15 years imp. and/or \$300,000 fine if dealt with on indictment; 2 years imprisonment and/or \$6,000 fine if dealt with summarily
PROHIBITION WITH CIVIL PENALTIES (INFRINGEMENT NOTICE SYSTEMS)			
SA	(since 1987) <100 grams of cannabis <5 grams cannabis resin ≤ 3 plants ⁽¹⁾	No, if expiated within 60 days	Expiation amount - \$50 to \$150 fine . (over 18 years of age only) Failure to expiate almost always results in automatic conviction.
ACT	(since 1992) Not >25 grams or 5 plants	No, if expiated within 1 month	\$100 fine, if expiated (applies to juveniles & adults) Failure to expiate doesn't necessarily result in cannabis conviction
NT	(1995 amendments) Cannabis - <50g Cannabis resin - 10g ≤ 2 plants	No, if paid in 28 days	\$200 fine, if infringement notice paid (over 18 years of age only) Failure to expiate is dealt with as fine default rather than cannabis offence
PROHIBITION WITH CAUTIONING			
VIC ⁽²⁾	(from September 1998) (cautioning state-wide) <50 grams of cannabis	Not for those cautioned	Up to two formal cautions (over 17 years of age only)
TAS	(since July 1998) <50 grams of cannabis leaf	Not for cautioned first offenders	Formal cautioning for first offenders

(1) Reduced from 10 plants in May 1999.

(2) An adjourned bond option for first offenders has also been maintained in Victoria.

For the last five years, the Australian Bureau of Criminal Intelligence has reported arrest and seizure for each state and territory of Australia in its annual *Australian*

Illicit Drug Report. Unit record data are collected, collated and analysed in an attempt to provide a national perspective. However, there are a number of limitations identified by the ABCI which have compromised the reliability, accuracy and coverage of the statistics including: lack of uniformity in recording methods; database limitations; problems with quality control; difficulty in quantifying small seizures; and inadequate drug identification (ABCI, 1999). One statistic reported is that which differentiates between those trading in, as opposed to simply using illicit drugs, which are divided into 'consumer' and 'provider' drug categories. A problem with the counting rule used is that all cultivation offences are classified as 'provider' offences. However, previous analysis of data from WA (Lenton Ferrante & Loh, 1996) has suggested that in that state, the vast majority (over 90%) of cultivation offences were for small numbers of plants. If this is true in other jurisdictions then the counting rule applied by the ABCI will inflate the proportion of offences classed as 'provider' offences. With these caveats, cannabis provider and consumer arrest episodes for the 1997-98 financial year are presented in Table 5.

Table 5
Cannabis consumer and provider arrest episodes⁽¹⁾ by state and territory 1997-98

State/ Territory	Type of Offence	CONSUMERS ⁽²⁾		PROVIDERS ⁽²⁾		TOTAL
		n	%	n	%	n
VIC	Arrests	5857	64.5	3177	35.5	9034
ACT	Arrests	78	56.1	61	43.9	139
	SCONs ⁽³⁾	151	64.2	84	35.8	235
NSW	Arrests	12125	78.4	3335	21.6	15460
NT	Arrests	353	84.5	65	15.5	418
	DINs ⁽³⁾	200	92.2	17	7.8	217
QLD	Arrests	10350	79.5	2671	20.5	13021
SA	Arrests	1799	66.7	901	33.3	2700
	CENs ⁽³⁾	7969	74.1	2783	25.9	10752
TAS	Arrests	907	75.8	289	24.2	1196
WA	Arrests	7149	62.2	4338	37.8	11487
TOTAL	Arrests+notices	46938	72.6	17721	27.4	64659

(1) Where a person is charged with more than one offence at any one episode they are counted once only. Where charged with both provider and consumer offences the only the former is counted.

(2) As discussed in the text above the counting rule applied here probably underestimates the proportion of consumers to suppliers as all cultivation charges are counted as provider offences.

(3) These refer to the infringement notice schemes in each jurisdiction.

(Adapted from Australian Bureau of Criminal Intelligence, 1999)

Victoria

The primary legislation concerning the prohibited status of cannabis use in Victoria is the *Drugs, Poisons and Controlled Substances Act 1981*, Section 3.8. Cannabis offences are dealt with under Part V - Drugs of Dependence. The use or attempted use of cannabis is a summary offence (with a maximum penalty of \$500, or 5 penalty units, with 1 unit = \$100) and penalties for cannabis use are less than those for other specified drugs of dependence (maximum penalty \$3,000 and/or 1 year imprisonment) (Section 75a). Possession (Section 73) and cultivation (Section 72) are indictable offences. Possession of less than 50 grams of cannabis not for trafficking (for personal use) carries a maximum penalty of \$500. Possession of 50 grams or more of cannabis not for trafficking carries a maximum penalty of \$3000, and/or 1 year imprisonment. Cultivation of cannabis, not for trafficking carries a maximum penalty of \$2000, and/or 1 year imprisonment. Under the Act, Possession of 250 grams of cannabis and cultivation of 10 plants are defined as 'a trafficable quantity' and are each treated as *prima facie* evidence of trafficking.

As the possession of paraphernalia does not constitute an offence in the state of Victoria, therefore such activity was not included in the overall rate of minor cannabis offending. Atkinson (1995) reported that the Victorian data was recorded in such a way that it was very difficult to distinguish cannabis offences from other drug-related offences. However, it has been estimated that possession and use of cannabis offences account for 3.5% of all reported offences (drug and non drug-related) and 59.8% of drug-related offences (Atkinson & McDonald, 1995). Such offences were reported at a rate of 324 offences per 100,000 head of population in 1992/93 (Atkinson, 1995).

Under Victorian legislation it is possible for first time minor cannabis offenders to receive an adjourned bond (The Victorian *Drugs, Poisons and Controlled Substances Act, 1981*). This means that a person appearing in court for a possession or use offence may be given a bond. If the conditions of the bond are complied with no conviction is recorded. Atkinson (1995) reported that 40% of minor cannabis charges heard in Victorian magistrates' courts during 1993 were dealt with by way of an adjourned bond.

There have been some recent developments in Victoria in the way minor cannabis offences are dealt with. Between 21 July 1997 and 21 January 1998 the Cannabis Cautioning Program Pilot (CCPP) was conducted by police in I District

(Broadmeadows area). Under this scheme police were able to issue a caution to people detected in possession of/using a small quantity of cannabis. There were several criteria for inclusion in the cautioning scheme; the scheme did not apply to juveniles under the age of 17, the cannabis had to be for personal use only (<50 grams), individuals with prior drug offences were excluded, the person had to admit the offence and consent to being cautioned and a caution could not be issued to the same person on more than two occasions (Victoria Police Strategic Development Department, 1998).

During the 6 months of the pilot there were 172 offenders detected for possession/use of cannabis, 97 of whom received a caution. No information was provided as to why the remaining 75 were not cautioned, therefore it is impossible to determine to what extent this was due to offenders not meeting the criteria, or due to other factors. Police who did not issue any cautions during the pilot programme were surveyed and asked "What factors influenced your decision *not* to issue a caution? *(Please rank the most important first to the least important last in order from 1 to 5)*". The options provided were criteria, demeanour of offender, prior involvements or convictions, circumstances of offence and other *(please specify)* (Appendix F, Victoria Police, 1998). However, no results were provided concerning this question.

Some information was provided regarding the 97 persons cautioned. Most were young males between the ages of 17 and 21 years, 57% of whom were first time offenders. The majority of cautions issued (82%) related to less than 5 grams of cannabis. Half of the total cautions related to a gram of cannabis or less. Among the officers who had issued a caution during the pilot, 93% thought cautioning saved time and paperwork in comparison to normal procedures and 98% found the cautioning forms easy to use. The report of the CCPP recommended that the scheme be continued and extended to other police districts throughout the state (Victoria Police, 1998). This took effect in September 1998. The extent to which the scheme may result in an escalating involvement with the criminal justice system for those cautioned was not addressed in the brief pilot evaluation. However, in a recent paper on the scheme Ditchburn (1999) noted that 5% of those cautioned had again come to the attention of police within a one month period. This re-offending rate seems high compared to other research on first (Lenton, 1998) and subsequent (Lenton, Ferrante & Loh, 1996)

minor cannabis offenders in a strict prohibition model, and suggests that further evaluation of the cannabis cautioning scheme is needed.

Police data

Police data concerning the overall number of offences (drug and non drug), drug-related offences and cannabis offences was obtained from the Victoria Police Crime Statistics publications (Victoria Police, 1996; Victoria Police, 1997) and the Strategic Development Department of the Victoria Police. The data obtained from the published annual police statistics is recorded in financial years (1995/96 and 1996/97) and does not include all offences; only the most serious matter dealt with was counted. Further, the data refers to “alleged offenders”, that is persons who have allegedly committed an offence and who have been processed by way of arrest, summons, caution or warrant of apprehension. This data is recorded on the Victoria Police Law Enforcement Programme (LEAP) database.

The data obtained from the Strategic Development Department of the Victoria Police included both the overall number of charges laid and the number of distinct persons charged for all offences (drug and non drug), drug offences and cannabis offences. Data was also provided concerning the overall number of offenders processed for possess/use cannabis, cultivate cannabis and traffic cannabis as their most serious offence. The data was supplied for 1996, 1997 and the first 6 months of 1998

Charges for all offences, drug offences and cannabis offences

The published annual police statistics differentiate between drug offences involving ‘cultivation, manufacture or trafficking’ and those involving ‘possession or use’. It is impossible to determine what proportion of these involve cannabis. In 1995/96 there were a total of 145,630 offences entered on the LEAP database. Of these 10,358 (7.2%) were for the possession or use of illicit drugs, while 4,756 (3.3%) were for cultivation, manufacture or supply of illicit drugs. Similar figures were found for 1996/97; of the 139,852 offences recorded, 9,526 (6.8%) involved possession/use of illicit drugs and 4,415 (3.2%) involved cultivation/manufacture/trafficking (Figure 16). As only the most serious offence a person is alleged to commit is recorded on the LEAP data base, it is likely that possession/use offences especially are under

represented. Such an offence would probably not be regarded as the most serious in the event that several offences were committed.

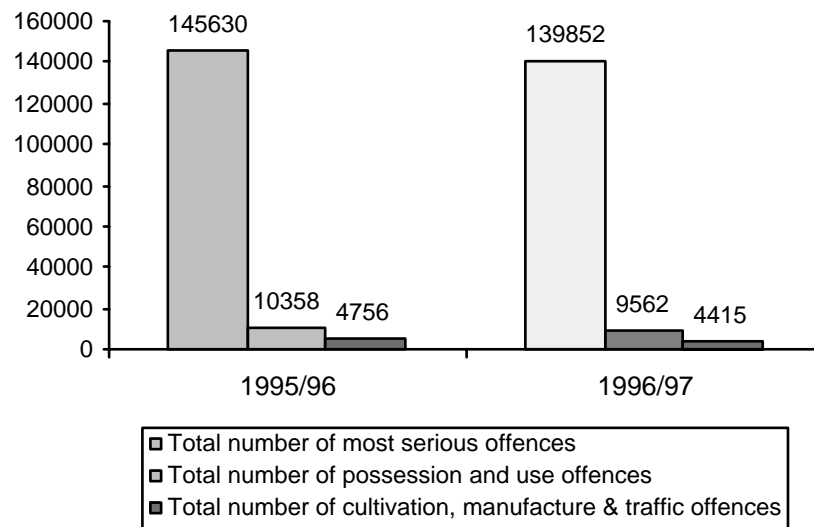


Figure 16: Number of most serious offences (drug and non drug), possession/use of drug offences and cultivation/ manufacture/traffic of drug offences recorded on the LEAP database, 1995/6-1996/7.

Source: Victoria Police (1996, 1997).

Distinct persons and charges

Unpublished data was obtained from the Victoria Police database concerning the number of charges laid for all offences, all drug-related offences and all cannabis offences for 1996, 1997 and the first 6 months of 1998. Drug-related offences include both cannabis and other illicit drugs. Data was also sought concerning the number of distinct persons charged for all offences, all drug offences and all cannabis offences during this period. Data concerning age, gender, and racial appearance of offenders were also supplied.

It may be seen from Table 6 that 251,120 charges were laid in Victoria in 1996, and 247,995 in 1997. There were 73,742 and 72,869 distinct persons charged in the respective years (note counting rule, Table 6). A lesser amount of charges are recorded for 1998, but it should be noted that the data for that year refer only to the first 6 months. Drug offences accounted for approximately 10-11% of all charges in all years, while cannabis offences accounted for about 7%. Cannabis offences represented 71.7% of all drug charges in 1996, 64.5% in 1997 and 56.1% in 1998 (65.3% overall). However, when considering distinct persons charged, it is apparent that approximately 15% of all individuals receive a drug-related charge and about

10% receive a cannabis related charge. Persons charged with cannabis offences comprised 69.0% of all persons charged with drug offences over the counting period.

Table 6

Overall number of charges and overall number of distinct persons charged for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June)

	NUMBER OF CHARGES LAID					
	All offences		Drug offences		Cannabis offences	
	n	%	n	%	n	%
1996 (Jan-Dec)	251120	100.0	25285	10.1	18125	7.2
1997 (Jan-Dec)	247995	100.0	26866	10.8	17337	7.0
1998 (Jan-June)	132725	100.0	15031	11.3	8434	6.4
Total	631840	100.0	67182	10.6	43896	6.9
	NUMBER OF PERSONS CHARGED*					
	All offences		Drug offences		Cannabis offences	
	n	%	n	%	n	%
1996 (Jan-Dec)	73742	100.0	11311	15.3	8458	11.5
1997 (Jan-Dec)	72869	100.0	11742	16.1	8001	11.0
1998 (Jan-June)	36948	100.0	6406	17.3	3868	10.5
Total	183559	100.0	29459	16.0	20327	11.1

* The counting rule used for number of persons is based on a person being counted only for the first time they were charged with any offence, any drug offence and any cannabis offence in a given month

Source: Strategic Development Department, Victoria Police.

Most serious cannabis offences

Data was also sought concerning most serious cannabis offences. The counting rule was based on a person being counted for every most serious offence they have been processed for relating to cannabis. The offences considered were possession/use of cannabis, traffic cannabis and cultivate cannabis. It may be seen from Table 7 that possession/use was a relatively common most serious offence compared to cultivation

(approximately 6000 per year compared to approximately 2000 per year), which was in turn more common than trafficking (approximately 1300 per year).

Table 7
Persons processed for possession/use, cultivation and trafficking of cannabis, 1996, 1997 and 1998 (Jan-June)

	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Possess/use	6396	65.4	6072	65.3	2876	62.0
Cultivate	2149	22.0	1903	20.5	1085	23.4
Traffic	1242	12.7	1329	14.3	678	14.6
Total	9787	100.0	9304	100.0	4639	100.0

Source: Strategic Development Department, Victoria Police.

According to the ABCI (1999), in Victoria during the 1997-98 financial year, there were 9,034 arrest episodes for cannabis offences of which approximately 65% were for consumer, as opposed to provider, offences, although for the reasons described above, this is likely to be an underestimate (see Table 5).

Adult/Juvenile

The data supplied by the Strategic Development Department, Victoria Police, for charges laid and distinct persons charged was divided according to whether the individual was adult or juvenile at the time of police contact (Table 8). For all offences, drug offences and cannabis offences, the majority of charges laid in each year were against adults. However, adults accounted for an even greater proportion of drug charges (about 94%) and cannabis charges (about 93%) laid than for charges for all offences combined (about 84%). It is not clear whether juveniles are less represented among cannabis and drug charges because they are less likely to commit such offences or because police choose to deal with drug and cannabis related offences committed by juveniles in some other way than formal charging, eg, caution.

Table 8
Overall number of charges laid for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June), by adult/juvenile

ALL OFFENCES						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	208374	83.0	207800	83.8	113807	85.7
Juvenile	42230	16.8	39362	15.9	18157	13.7
Unknown	516	0.2	833	0.3	761	0.6
Total	251120	100.0	247995	100.0	132725	100.0
DRUG OFFENCES						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	23429	95.7	24781	92.2	13863	92.2
Juvenile	1831	7.2	2013	7.5	1093	7.3
Unknown	25	0.1	72	0.3	75	0.5
Total	25285	100.0	26866	100.0	15031	100.0
CANNABIS OFFENCES						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	16740	92.4	16013	92.4	7853	93.1
Juvenile	1366	7.5	1269	7.3	541	6.4
Unknown	19	0.1	55	0.3	40	0.5
Total	18125	100.0	17337	100.0	8434	100.0

Source: Strategic Development Department, Victoria Police.

When the number of distinct persons charged is considered a somewhat different picture emerges (Table 9). Once again, adults outnumbered juveniles for all offences, drug offences and cannabis offences in all 3 years. However, adults accounted for only 77% of distinct persons charged for all offences and 90% of distinct persons charged for drug offences and cannabis offences (compared to 84%, 94% and 93% respectively of charges laid).

Table 9
Distinct persons* charged for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June), by adult/juvenile

ALL OFFENCES						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	57082	77.4	57410	78.9	29414	79.6
Juvenile	16408	22.3	15153	20.8	7270	19.7
Unknown	252	0.3	306	0.4	264	0.7
Total	73742	100.0	72869	100.0	36948	100.0
ALL DRUG OFFENCES						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	10229	90.4	10605	90.3	5828	91.0
Juvenile	1069	9.5	1108	9.4	550	8.6
Unknown	13	0.1	29	0.2	28	0.4
Total	11311	100.0	11742	100.0	6406	100.0
ALL CANNABIS OFFENCES						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	7601	89.9	7192	89.9	3527	91.2
Juvenile	849	10.0	786	9.8	324	8.4
Unknown	8	0.1	23	0.3	17	0.4
Total	8458	100.0	8001	100.0	3868	100.0

** The counting rule used for number of persons is based on a person being counted only for the first time they were charged with any offence, any drug offence and any cannabis offence in a given month*

Source: Strategic Development Department, Victoria Police.

With regard to specific cannabis offences, it was again the case that most people processed in all three years were adult. Juveniles accounted for about 12% of persons charged with possession/use as a most serious offence, but were only 2% of those charged with cultivation and less than 1% of those charged with trafficking as a most serious offence.

Table 10
Persons processed for possess/use cannabis, cultivate cannabis and traffic cannabis offences, 1996, 1997 and 1998 (Jan-June), by adult/juvenile

POSSESS/USE						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	5640	88.2	5271	86.8	2562	89.1
Juvenile	753	11.8	782	12.9	307	10.7
Unknown	3	0.0	19	0.3	7	0.2
Total	6396	100.0	6072	100.0	2876	100.0
CULTIVATE						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	2083	96.9	1867	98.1	1059	97.6
Juvenile	60	2.8	32	1.7	18	1.7
Unknown	6	0.3	4	0.2	8	0.7
Total	2149	100.0	1903	100.0	1085	100.0
TRAFFIC						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Adult	1140	91.8	1272	95.7	627	92.5
Juvenile	102	8.2	53	4.0	43	6.3
Unknown	0	0.0	4	0.3	8	1.1
Total	1242	100.0	1329	100.0	678	100.0

Source: Strategic Development Department, Victoria Police.

Gender

Males were generally more likely to be involved in all types of offending than females. From 1996 to 1998 males accounted for approximately 80% of charges laid for all offences, 84% of all drug charges and 84% of all cannabis charges. The proportions for distinct persons were almost identical to these. The gender of all persons charged and distinct persons charged by police from 1996 to 1998 are presented in Tables 20 and 21 in Appendix 6. Not surprisingly, over the same period males represented the vast majority of persons processed for possession/use of cannabis (86%), cultivation of cannabis (83%) and trafficking of cannabis (82%). The

gender profiles for people processed for possession/use of cannabis, cultivation of cannabis and trafficking of cannabis are presented. In Table 22, and Figure 47 in Appendix 6.

Age in years

Figure 17 presents charge data by age group. More charges were laid in the 15 to 19, 20 to 24 and 25 to 29 year old age groups than other age groups. However, the shape of the curve differs between offence types; for all offences, the distribution peaks in the 15 to 19 year old age group (accounting for about 27% of all charges laid) and then drops away. In contrast, for both drug offences and cannabis offences, a slight increase in the number of charges laid occurs between 15 to 19 years (about 22-24% of charges laid) and 20 to 24 years (about 25-26% of charges laid) with the decline thereafter more gradual than for all offences. The distinct persons age distribution was very similar to overall charge data so is not presented. Detailed presentations of charges and distinct persons by age groups are presented in Appendix 6 Tables 23 and 24.

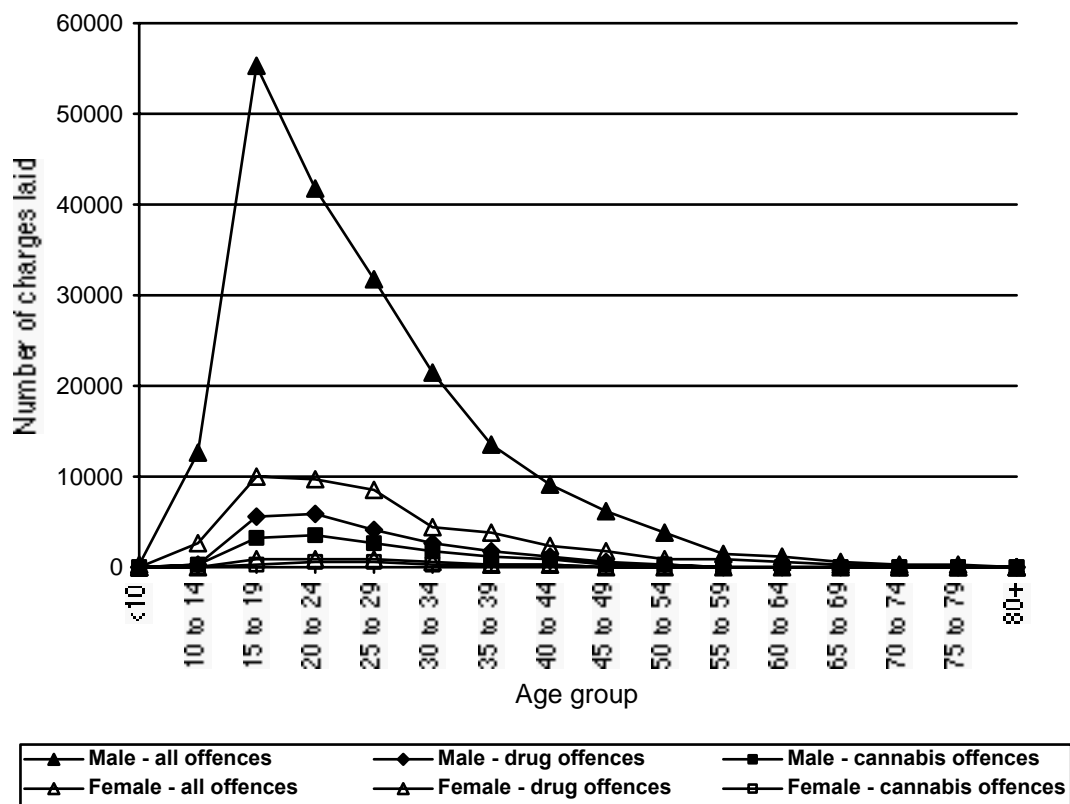


Figure 17: Overall number of charges laid for all offences, all drug offences and all cannabis offences by age and gender, 1997

Source: Strategic Development Department, Victoria Police.

Figure 18 presents age data for specific cannabis offences. Although overall, more cannabis charges were brought against those in the 15 to 19, 20 to 24 and 25 to 29 year old age groups the peak age for possession/use offences (15 to 19 years) was younger than that for cultivation (25 to 29 years) or trafficking (20 to 24 years). Detailed presentations of cannabis charges by age groups are presented in Appendix 6 Table 25.

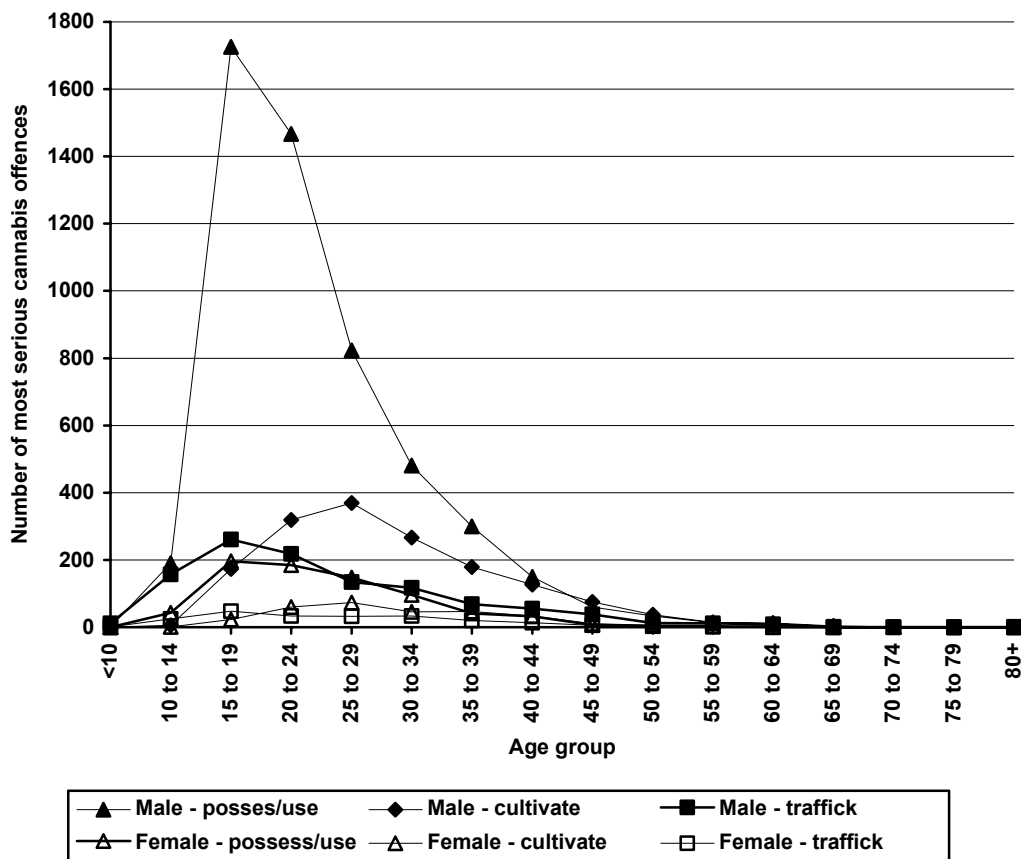


Figure 18: Overall number of charges laid for most serious cannabis offences by age and gender, 1997

Source: Strategic Development Department, Victoria Police.

Magistrates Court data – All drugs combined

Data concerning drug-related offences committed in Victoria was sought from the Criminal Justice Statistics and Research Unit (CJS&RU). Statistics relating to drug charges heard in Victorian Magistrates' Courts between January 1996 and June 1998 was available according to age, sex, charge (use, possess, traffic, cultivate and other), plea and outcome. It should be noted that all data refers to charges heard, rather than

individual persons. It is possible that some people may have committed two or more offences and are therefore counted more than once. Unlike the police data presented above, all charges a person faces are included, not just the most serious offence.

Unfortunately, data recorded by Magistrates' Courts did not distinguish between cannabis offences and other drug-related offences until March 1998. As the data available at the time of preparing this report only extended until June 1998, no separate data for cannabis related offences was able to be provided. Given this, Magistrates' Court data has been presented in Appendix 6. When it becomes available, court data broken down by drug type should further enhance understanding of cannabis offences in the Victorian criminal justice system.

New South Wales

For the year 1993, most (87%) of the cannabis related offences recorded in New South Wales were minor. Such minor cannabis offences made up 3.3% of all recorded offences, drug and non drug-related. Furthermore, minor cannabis offences accounted for 70% of all drug-related offences recorded. Half (50.4%) of all recorded drug-related offences were for the *possession and use* of cannabis (Atkinson, 1995).

According to the ABCI (1999), in NSW during the 1997-98 financial year, in approximately 78% of arrest episodes for cannabis offences the person was arrested for consumer, as opposed to provider, offences, although for the reasons described above, this is likely to be an underestimate (see Table 5).

Overall, there were 16,590 minor cannabis offences recorded and 13,710 charges heard in NSW local courts during 1993. There were 199 possession/use offences recorded per 100,000 head of population and 242 paraphernalia offences per 100,000. More than half of the people appearing in court for possession/use of cannabis had that offence as their most serious (Atkinson, 1995).

The most commonly applied penalty for possession/use of cannabis was a fine (78%). Only 10% of those found guilty avoided having a conviction recorded. Detention was a relatively rare penalty (2.4%), as were community service orders (2.4%) (Atkinson, 1995).

Queensland

The offence of use (or self administer) cannabis does not apply in the state of Queensland. Furthermore, there is no distinction made under Queensland law) between small amounts for personal use and quantities up to 500 grams (ie. a trafficable quantity). At the time of Atkinson's study (1995) there was very little information available concerning minor cannabis related offences in Queensland and so limited information was reported. In 1991/92 there were 259 possession of cannabis offences cleared per 100,000 head of population (443 per 100,000 if both possession of cannabis *and* possession of paraphernalia are included).

According to the ABCI (1999), in Queensland during the 1997-98 financial year, approximately 79% of arrest episodes for cannabis offences were for consumer, as opposed to provider, offences, although for the reasons described above, this is likely to be an underestimate (see Table 5).

Tasmania

Minor cannabis related offences in Tasmania include those relating to the possession, use and cultivation of cannabis as well as the possession of paraphernalia. Atkinson (1995) reported that there was limited police and court data available from Tasmania concerning the prevalence of cannabis related offences. Possession/use of cannabis charges were estimated to comprise 8.4% of all charges (drug and non drug-related) finalised in Tasmanian lower courts during 1993. Furthermore, they represented 61.3% of all drug charges. The rate of finalised possession/use of cannabis charges was 489 per 100,000 head of population (Atkinson, 1995).

According to the ABCI (1999), in Tasmania during the 1997-98 financial year, approximately 76% of arrest episodes for cannabis were for consumer, as opposed to provider, offences, although for the reasons described above, this is likely to be an underestimate (see Table 5).

On the 13th July 1998 Tasmania introduced a 12 month trial cannabis cautioning system whereby police who detect a minor cannabis offence may opt to issue a caution rather than lay an official charge (Select Committee into the Misuse of Drugs Act 1981 [1998]). The system is discretionary and therefore some people may still be required to make a court appearance for these offences.

Northern Territory

Minor cannabis related offences in the Northern Territory include those relating to the possession, use and cultivation of cannabis as well as the possession of paraphernalia. Limited data was available from the Northern Territory. Charge data from the police recorded on the Australian Bureau of Criminal Intelligence (ABCI) database suggested that there were 317 possession/use of cannabis charges laid during 1993 (Atkinson, 1995). Such offences comprised 67.5% of all drug-related charges laid for the year (Atkinson & McDonald, 1995).

Northern Territory law was amended in 1995 so that people detected cultivating not more than two cannabis plants or in possession of cannabis (see Table 11 regarding allowable quantities) are issued with an on the spot fine rather than going to court (*Northern Territory of Australia Misuse of Drugs Amendment Act 1995*; Select Committee into the Misuse of Drugs Act 1981 (1998)). The expiation fee is \$200. If the fine is not paid within a specified period a courtesy letter is issued. Should the fine still remain unpaid or other suitable arrangements not be made, 'the clerk [of the court] will issue a warrant of commitment or distress against the person' which means the person is arrested and taken straight to prison, or a police lock-up, where they are held until they pay the fine, or cut it out at a rate of \$50 per day (McDonald, personal communication). Those issued with an infringement notice do have the option of going to court to contest the matter, but risk acquiring a criminal conviction if found guilty.

Table 11
Threshold quantities of cannabis for which an infringement notice may
be issued in the Northern Territory

Form of cannabis	Threshold quantity
Cannabis oil	1 gram
Cannabis plant material (incl. Flowers, fruiting tops, leaves, stalks and seeds)	50 grams
Cannabis resin	10 grams
Cannabis seed	10 grams
Cannabis plants	2 plants

Source: Select Committee into the Misuse of Drugs Act 1981 (1998).

The Principal Registrar of the Darwin court house was contacted directly regarding charge and outcome data for the present report. It appears that summary data concerning cannabis related offences is currently unavailable for the Northern Territory, although it is expected that the court system will be computerised in 1999.

According to the ABCI (1999), in the Northern Territory during the 1997-98 financial year, there were 217 persons issued with infringement notices for cannabis offences of which approximately 92% were for consumer, as opposed to provider, offences. According to the ABCI there were also 418 persons arrested for cannabis offences of which 84.5% were for consumer offences (see Table 5).

South Australia

Police data

Christie and Ali (1995) collated data on minor cannabis related offences in South Australia which was updated by Christie (1999). The Cannabis Expiation Notice (CEN) scheme was introduced in South Australia in 1987. Under this scheme, persons detected committing a minor cannabis related offence may be issued with an infringement notice. If the notice is paid within the prescribed time period, the recipient does not have to go to court and no criminal conviction is recorded. The scheme does not apply to juveniles.

Cannabis Expiation Notices are generally for the value of \$50 or \$150. Offences which attract the lower penalty are possession of less than 25 grams of cannabis, possession of less than 5 grams of cannabis resin and consumption of cannabis/cannabis resin in a private place. A \$150 fee is applicable in cases involving possession of 25 grams or more of cannabis (but less than 100 grams), possession of 5 grams or more of cannabis resin (but less than 20 grams) or cultivation of 3 or fewer cannabis plants for personal use (reduced from 10 plants in May 1999). Persons found in possession of a smoking implement in the absence of any other offence are only required to pay \$10. If another expiable cannabis offence is detected, a fee of \$50 applies (Table 12).

Table 12
Schedule of fees for expiable offences, South Australia

Offence	Fee (\$)
Possession of cannabis	
< 25 g	50
25g or more but < 100 g	100
Possession of cannabis resin	
< 5 g	50
5g or more but < 20 g	150
Smoking or consumption of cannabis or cannabis resin in a private place	50
Possession of equipment for smoking or consumption of cannabis or cannabis resin, whether in public or private	
in connection with one of the above offences	10
otherwise	50
Cultivation of cannabis plants	
Not more than 3 plants* (for personal use only)	150

* Reduced from 10 plants in May 1999.

Source: Select Committee into the Misuse of Drugs Act 1981 (1998).

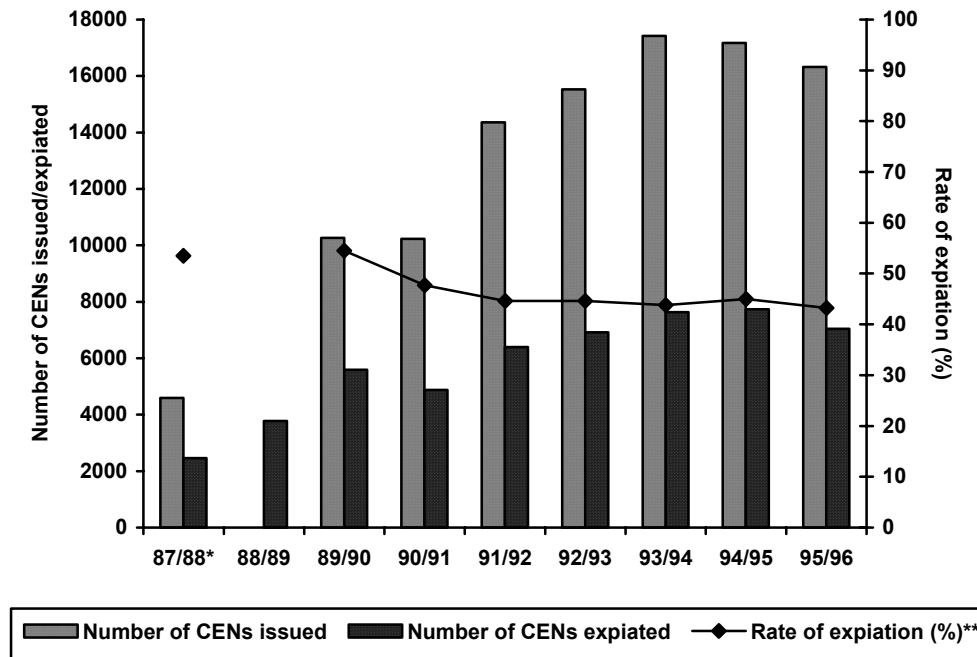
Atkinson and McDonald (1995) reported that the rate of possession/use of cannabis offences was 494 per 100,000 head of population in 1991-92, while the rate of possess/use cannabis/possess implement offences was 897 per 100,000. This figure was based on both reported crime and CEN data.

The number of CENs issued has increased each year since the inception of the scheme from 6,200 in 1987/88 to 17,425 in 1993/94, before dropping to 16,321 in 1995/96. Data was unavailable for the year 1988/89 (Figure 19). It seems that the increase noted is more likely to be due to changes in police practices than an escalation in the prevalence of cannabis use (Christie & Ali, 1995; Christie, 1999). Data concerning the absolute number of notices expiated each year is also presented.

Data from the ABCI (1999) indicates CENs were issued on 10,752 persons arrest episodes in SA during the 1997/98 financial year, and that in 74.1% of these the most serious offence was a consumer offence (see Table 5). However, this ABCI data is probably an underestimate possibly due to the counting rule which classes all cultivation offences as provider offences.

The regulation of cannabis possession, use and supply

The line graph overlaid on Figure 19 depicts the proportion of notices issued each year that were actually expiated. It may be seen that while the rate of expiation was initially between 50% and 55%, it has since stabilised at around 45%. Once again, data for 1988/89 are incomplete.



Notes : * Pre August 1988, a single CEN could be issued for a number of offences. Since then, only one offence is recorded per CEN. The data presented for 1987/88 refers to the number of CENs and therefore underestimates the actual number of offences (ie. 4,559 CENs issued for 6,231 offences).

** The rate of expiation is calculated as a proportion of total CENs issued and does not exclude the small number of CENs cancelled or withdrawn each year.

Figure 19: The number of CENs issued and expiated, with rates of expiation 1987/88-1995/96

Source: Christie (1999).

Christie (1999) noted the rate of expiation of notices has remained low compared with other types of infringement notices (such as motor vehicle infringements). The data do not provide clear answers as to why the rate of expiation of CEN offences has been as low as it has. However, it may well be due to financial hardship experienced by cannabis offenders, particularly younger offenders and those who may have received multiple CENs over time. Also, as it is probably more difficult for police to verify proof of identity at the time a CEN is issued to an offender, compared to other types of offence (eg. traffic offences, where registration information can be used for

follow-up) there may be more CEN matters lost to follow-up. Additionally, poor understanding amongst this group of the actual legal status of minor cannabis offences and the consequences of failure to pay expiation fees (Ali, Christie, Lenton *et al.*, 1999).

Between 1991/92 and 1995/96 the total monetary value of CENs issued was \$5,675,963, ranging from \$1,013,770 in 1991/92 to \$1,216,788 in 1993/94 (Figure 20). The total amount of money recovered was \$2,680,123. The lowest amount paid was in 1991/92 (\$494,865) and the highest in 1993/94 (\$579,545). It should be noted that notices issued in one year may not have been expiated until the following year. The average value of each CEN issued between 1991/92 and 1995/96 was \$70.25.

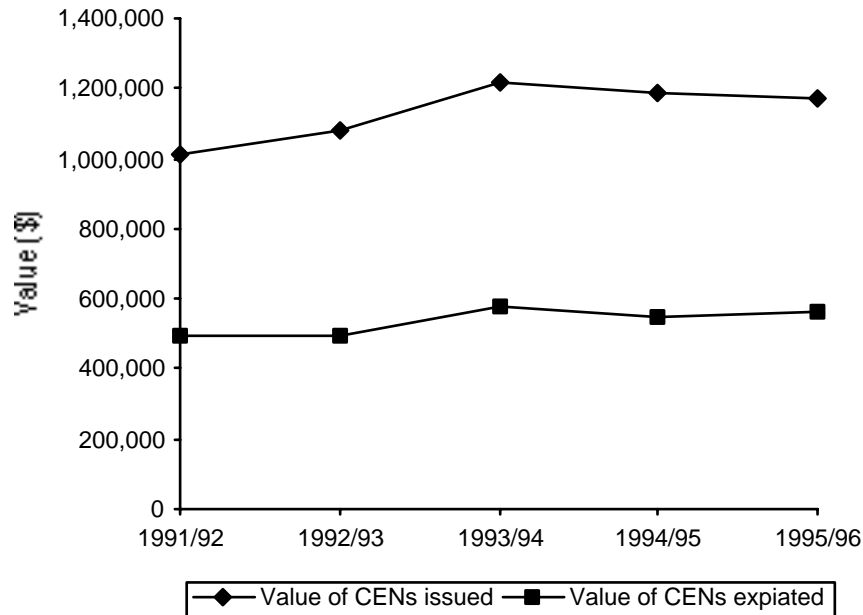
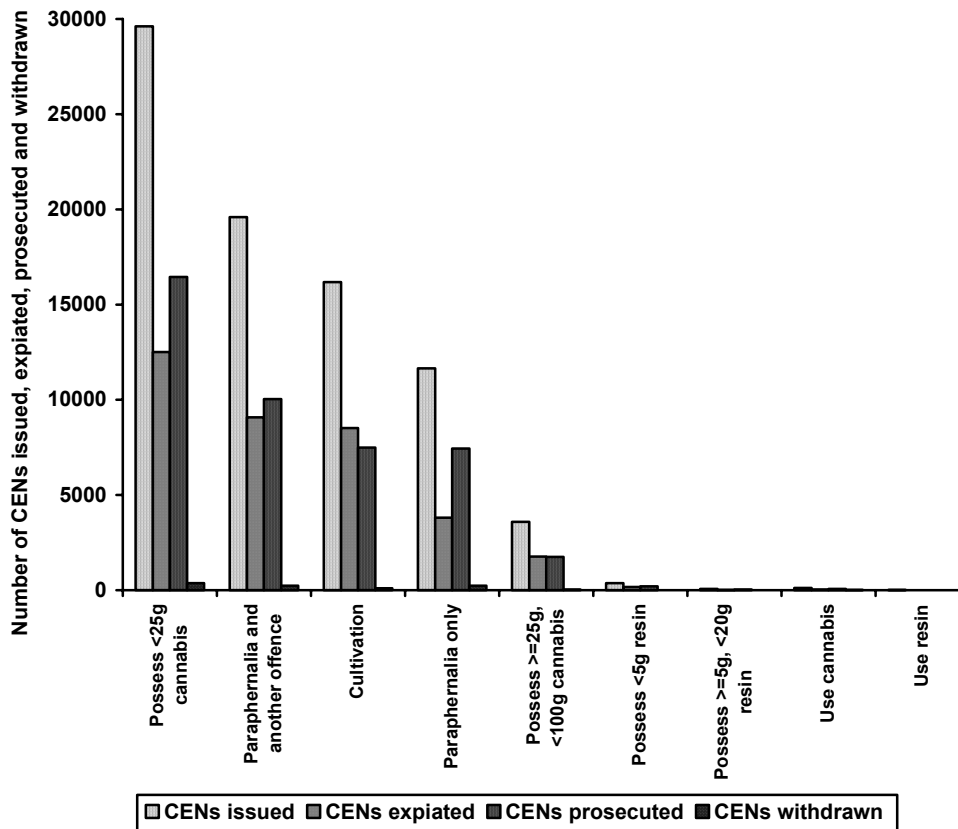


Figure 20: The value of CENs issued and expiated, 1991/92-1995/96

Source: Christie (1999)

Figure 21 shows the absolute number of CENs issued, expiated, forwarded for prosecution and withdrawn according to offence type between 1991/92 and 1995/96. A total of 81,182 CENs were issued during this period, predominantly for the possession of less than 25 grams of cannabis, possession of a smoking implement in combination with another offence, cultivation of cannabis and paraphernalia offences committed without any other expiable offence.

The regulation of cannabis possession, use and supply



Note: There were so few CENs issued and expiated for use cannabis and possession of ≥ 5 g resin so these have not been presented in this Figure.

Figure 21: Number of CENs issued, expiated, forwarded for prosecution and withdrawn according to offence type, 1991/92-1995/96

Source: Christie (1999)

The data presented in Figure 22 below is the same as that shown in Figure 21 above, however, it is expressed in terms of proportion. That is, the columns show what proportion of the total CENs issued were for each offence type. The same applies to CENs expiated, forwarded for prosecution and withdrawn. It may be seen that most CENs issued during this time were for the possession of a small amount of cannabis (36.4%). A quarter (24.1%) of offences involved possession of a smoking implement in combination with another offence, while a fifth (19.9%) were for cultivation of cannabis. Paraphernalia offences detected in the absence of any other expiable offence accounted for 14.3% of notices issued and each of the other expiable offences accounted for less than 5% of the total (Christie, 1999).

Only 35,895 of all CENs issued were actually expiated. It may be seen from Figure 22 that the rate of expiation for different offence types was not always in direct proportion to the number of notices issued for that offence. For example, while

possession of less than 25 grams of cannabis represented 36.4% of all notices issued, this offence accounted for only 34.8% of all offences expiated. A disproportionate number were withdrawn (37.8% of notices withdrawn). The proportion of CENs expiated in relation to the cultivation of cannabis (23.7% of notices expiated) was greater than the proportion of notices issued for this offence (19.9% of notices issued). It may be that offenders receiving a notice for this offence would perceive a greater advantage in dealing with the matter by payment and avoiding prosecution than is the case for other offences. A higher proportion of CENs were withdrawn for paraphernalia offences in the absence of any other offence (24.4% of notices withdrawn) than would be expected on the basis of the proportion of CENs issued (14.3% of notices issued). The same was true for use of cannabis (1.4% of all notices withdrawn compared to 0.2% of all notices issued). It may be that it would be more difficult for police to sustain such charges if the matter were forwarded for prosecution (Christie, 1999).

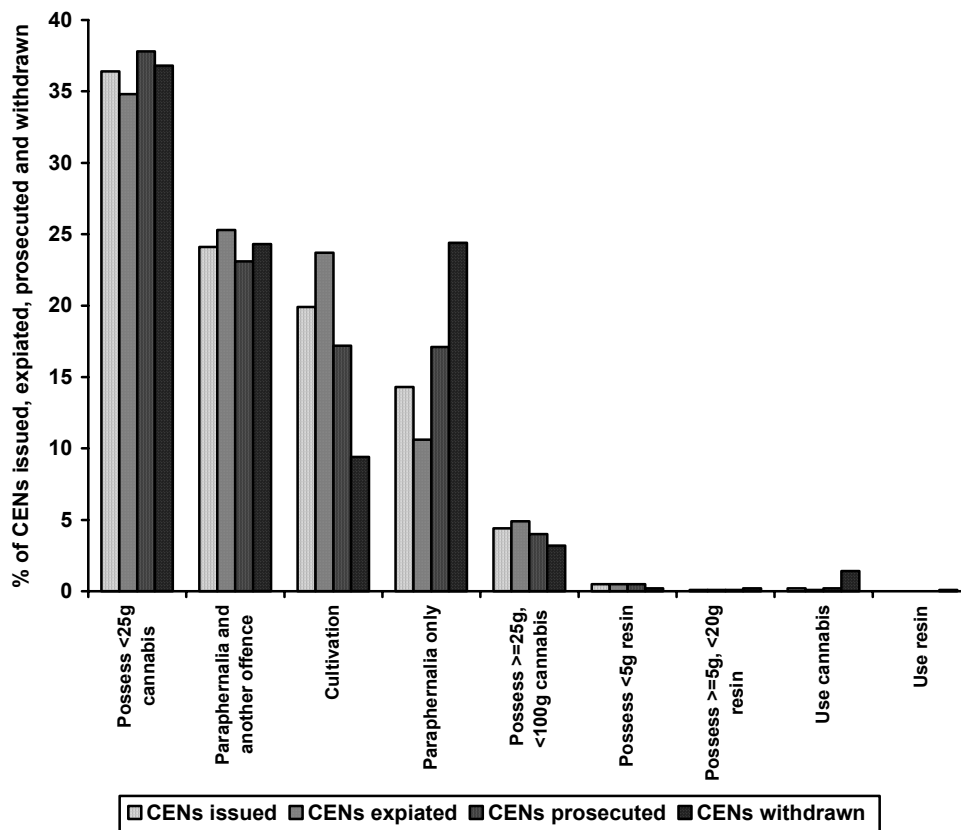


Figure 22: Proportion of CENs issued, expiated, forwarded for prosecution and withdrawn according to offence type, 1991/92-1995/96

Source: Christie (1999)

It is of interest to note that of the unpaid CENs forwarded for prosecution between 1991/92 and 1995/96, 92.2% resulted in a conviction (Christie, 1999). In total, around 5% of all CENs issued were formally recorded as having been withdrawn, dismissed or cancelled. However, data were not available on how many prosecutions may have been cancelled at a later stage, unable to be located by police (because for example the person gave false identifying information at the time the CEN was issued), or whether court-imposed penalties were successfully completed or whether warrants were issued and finalised for non-payment of fines (Ali, Christie, Lenton, *et al.* (1999).

Of the CENs issued between 1991/92 and 1995/96, 87.1% were received by males. The rate of expiation among females over the time period was 45.8%, marginally higher than the rate for males (44%). Approximately half (50.5%) of CENs were received by people in the 18 to 24 year old age group (41,004 notices), followed by the 25 to 34 year old age group (27,193 notices). The rate of expiation increased with age. It may be seen from Figure 23 that there were 796 CENs issued to people under the age of 18. These notices were issued in error, as the scheme does not apply to juveniles (Christie, 1999).

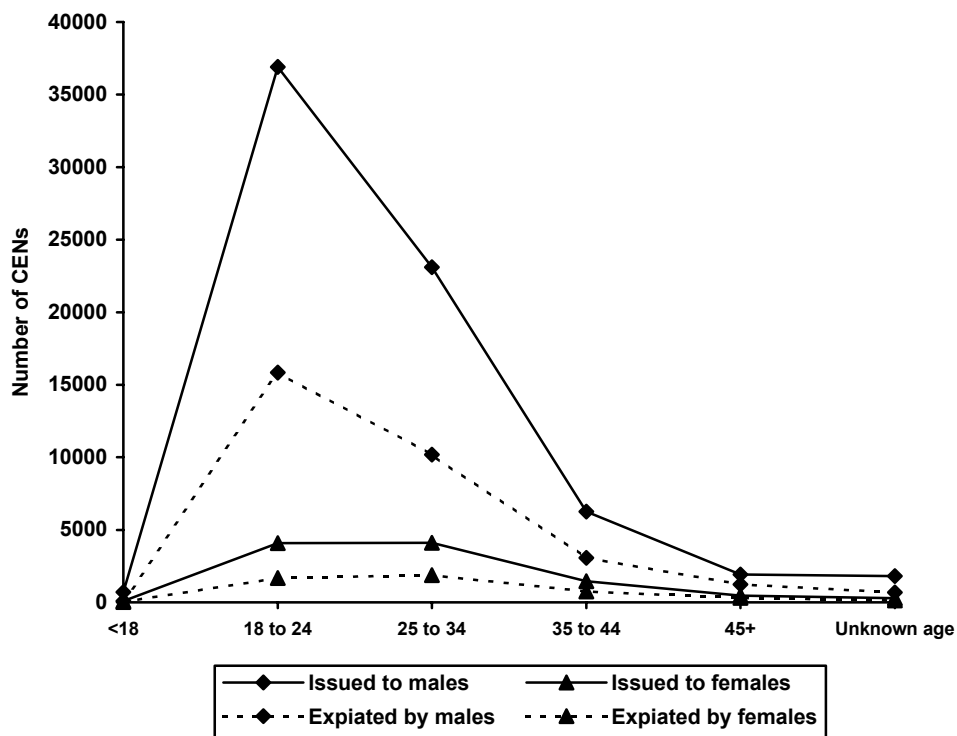


Figure 23: Number of CENs issued and expiated by age and gender, 1991/92-1995/96

Source: Christie (1999)

Christie (1999) reported that the average value of CENs issued was \$70.25, while the average value of CENs expiated was \$74.35, and of CENs forwarded for prosecution, was \$67.77. He noted that the higher average value for those expiated suggested that there may be greater awareness by offenders detected for the apparently more serious expiable offences (eg. cultivation) that it is in their interests to clear the matter quickly by paying expiation fees, rather than letting them lapse and have the matter go to court.

An analysis of repeat offending under the CEN system was conducted but must be interpreted cautiously, as difficulties were encountered in matching records. However, notwithstanding this limitation, it appeared that about 9% of CENs issued were given to offenders who had received CENs in that year and over a five year period the figure was 13%. There was also a suggestion that there was a higher proportion of repeat offenders among those who failed to expiate their fines and a suggestion that these individuals shouldered a greater burden of court imposed fines as well as the criminal record (Christie, 1999).

Christie (1999) noted that the rate of expiation of CEN offences may improve following recent changes to the way in which all expiable offences are administered under the *Expiation of Offences Act, 1996* in South Australia. It was anticipated that increasing the number of payment options (eg. instalment payments, community service) which can be specified before an unpaid CEN matter is forwarded for prosecution may result in a higher proportion of CENs being expiated. In addition, the provision of clearer and more detailed information on the consequences (especially conviction) of failure to pay expiation fees may help to improve expiation rates.

Court data

South Australian court data only includes the major offence for which a person is charged. For example, in a case where a person was detected committing a burglary and in possession of cannabis, only the burglary charge would be recorded. For this reason, court statistics may in fact underestimate the number of cannabis charges appearing before the court (Christie & Ali, 1995).

One of the intentions of the CEN system was to reduce the number of minor cannabis related offences appearing before the courts. Christie and Ali (1995) report that there was in fact an initial downturn in the number of such offences coming

before the Magistrates Court after the CEN system was introduced. However, the number has since increased and was reported to be almost 6,000 in 1993 (compared to 2,321 in 1987). Many of these may be attributed to people who have failed to expiate. Half of minor cannabis cases appearing before the court involved possession/use of cannabis as the most serious offence, while a quarter were for cultivation (Christie & Ali, 1995). The increase in the number of both CENs issued and people appearing in the Magistrates Court with a cannabis related charge as their most serious offence is a consequence of 'net-widening' caused by increased police detections rather than an increase in the prevalence of cannabis use amongst the South Australian population (Donnelly, Hall & Christie 1995).

Australian Capital Territory

Police data

An amendment to the *ACT Drugs of Dependence Act 1989* allowed police officers in that jurisdiction the discretion to issue a Simple Cannabis Offence Notice (SCON) to persons found cultivating five or less cannabis plants or in possession of not more than 25 grams of cannabis. A subsequent amendment in 1994 also allowed a SCON to be issued for the use of cannabis (Wilson, 1995).

Offenders receiving a SCON have the option to pay the specified fine of \$100 within a certain time and so avoid a court appearance and conviction. Offenders who fail to pay may be summonsed to court and face the possibility of a criminal conviction. For 1993/94 only 56% of SCONs issued were paid. Unpaid SCONs are referred back to the issuing police officer who may or may not pursue the matter (Wilson, 1995).

There were 400 SCONs issued between 6.3.93 and 8.2.95, although these involved only 372 distinct persons (ie. some people received more than one SCON in the time period). Most of these (72%) were for the possession of cannabis, while 28% were for cultivation. Males were more likely to be issued with a SCON than females, as were people between the ages of 18 and 34 years than other age groups (Wilson, 1995).

For the current project, more recent data was sought from the Australian Federal Police regarding the issuing of SCONs. Figure 24 depicts SCON data provided by the Australian Federal Police for cultivation of a prohibited plant, participate in the

cultivation of a prohibited plant and possession of a prohibited substance. The data refer to individual offences, therefore an individual fined more than once would be counted for each separate offence.

It may be seen that the total number of SCONs issued increased from 209 in 1994 to 347 in 1996, then declined to 300 in 1997. The data for 1998 are incomplete, representing only nine months. In all years males appeared to be more likely to be detected committing an offence and issued with a SCON than females. There were a total of 1262 people issued with a SCON between January 1994 and September 1998. Of the 1255 whose gender is known, 85.1% were male.

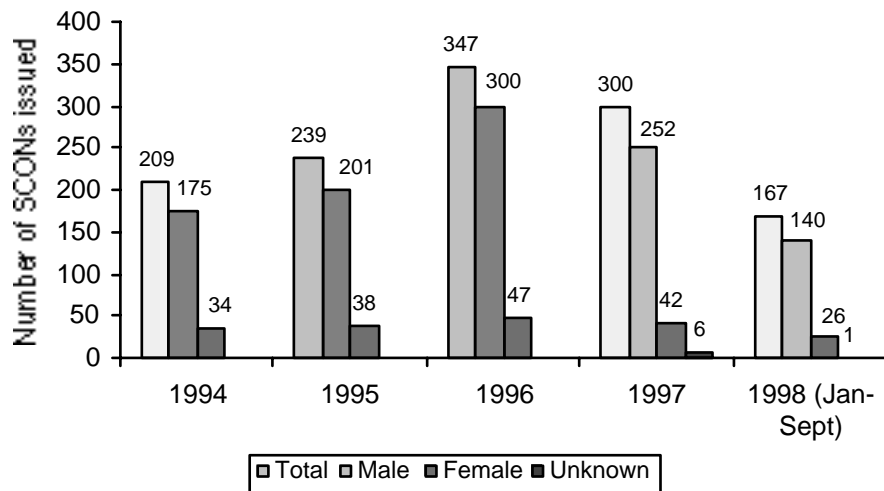


Figure 24: The number of people issued with a SCON for cultivation of a prohibited plant, participate in the cultivation of a prohibited plant and possession of a prohibited substance by gender, 1994-1998

Source: AFP MNIFTY database.

The number of juveniles compared to adults issued with a SCON is shown in Figure 25. It may be seen that the number of SCONs issued to adults exceeded the number issued to juveniles in all years. Of the 1262 people issued with a SCON over this time, 88.7% were adults.

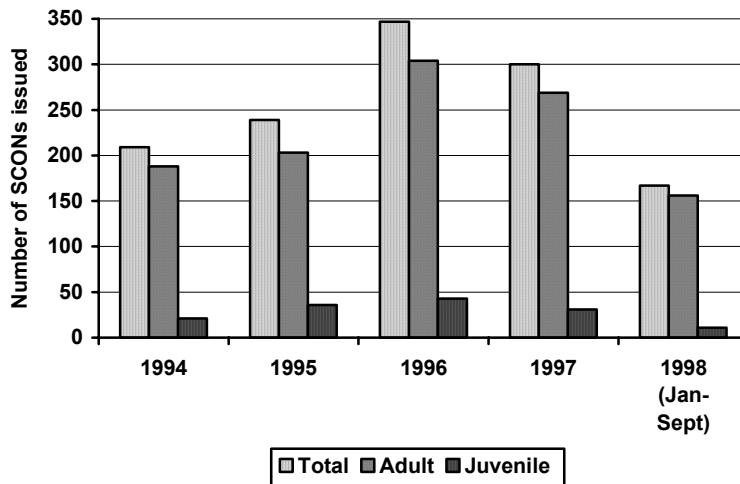


Figure 25: The number of people issued with a SCON for cultivation of a prohibited plant, participate in the cultivation of a prohibited plant and possession of a prohibited substance by juvenile/adult, 1994-1998

Source: AFP MNIFTY database.

During the period 1994 to 1998 the majority of SCONs issued were for possession of cannabis (71.6%). A smaller number were issued for cultivation (26.6%) while very few were issued for participation in cultivation (1.8%) (Figure 26).

According to the ABCI (1999), in the ACT during the 1997-98 financial year, there SCONs were issued to 235 persons approximately 64% of which were for consumer, as opposed to provider, offences, although for the reasons described above, this is likely to be an underestimate (see Table 5).

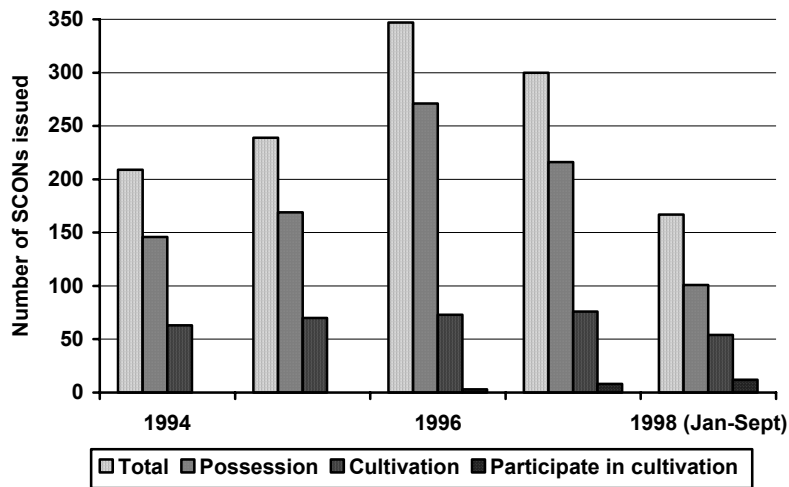


Figure 26: The number of people issued with a SCON for cultivation of a prohibited plant, participate in the cultivation of a prohibited plant and possession of a prohibited substance, 1994-1998

Source: AFP MNIFTY database.

Table 13 is reproduced from information provided by the Australian Federal Police concerning the total value of SCONs issued and the number of fines still outstanding. It can be seen that between January 1994 and September 1998 fines to a total value of \$126,200 have been issued. The proportion of these not yet fully paid varied from 32.2% in 1995 to 50% in 1997. Averaging across the 1262 fines issued between 1994 and October 1998, 42.1% have not been paid. Of these, 98.5% are completely unpaid, while partial payment has been received for 1.5%.

Table 13: Summary of the value of SCONs issued and number of fines outstanding in the ACT region, 1994 -1998

	Year Fine Issued											
	1994		1995		1996		1997		1998 (Jan-Sept)		Total	
Value of all fines	\$20,900		\$23,900		\$34,700		\$30,000		\$16,700		\$126,200	
No (fines issued)	209		239		347		300		167		1262	
	n	%	n	%	n	%	n	%	n	%	n	%
No. of fines not paid	90	43.1	77	32.2	147	42.4	150	50.0	67	40.1	531	42.1
Totally unpaid	89	42.6	77	32.2	147	42.4	144	48.0	66	39.5	523	41.4
Partially unpaid	1	0.5	0	0.0	0	0.0	6	2.0	1	0.6	8	0.6

Note: A fine issued late in one year may not be due for payment until early the next year. If the value recorded in one year is not paid, the paid proportion is recorded in the issuing year and the unpaid proportion in the following year.

Source: AFP MNIFTY database.

Court data

The ACT court data reported on by Wilson (1995) was limited by the fact that the reporting mechanisms of both the Children's Court and Magistrates Court fail to distinguish cannabis offences from other drug-related offences. Furthermore, it was impossible to determine what proportion of the cases involved unpaid SCONs. There were 52 drug charges heard in the Children's Court in 1994, of which 36 (69%) were for possession, cultivation or administration of a prohibited substance. In 1993 there were 401 drug charges heard in the Magistrates Court, 245 (61%) for the possession, cultivation or administration of a prohibited substance (Wilson, 1995).

For the purposes of the present study a request was made to the ACT Magistrates and Children's Court for charge and outcome data concerning the use/administration of cannabis, possession of cannabis and cannabis cultivation from 1994 onwards. The data supplied included sale and supply offences (sale/supply, participate in sale/supply, possess cannabis for sale/supply and attempt sell/supply), sale and supply of trafficable/commercial quantity offences (sale/supply trafficable/commercial

quantity of cannabis, possess trafficable/commercial quantity of cannabis for sale supply), and sale and supply to under 18 offences (sale/supply cannabis to under 18, participate in sale/supply cannabis to under 18, possess cannabis for sale/supply to under 18, possess commercial/trafficable quantity of cannabis for sale/supply to under 18) from 1990 to 4 November 1998. There was also data concerning two charges heard for use cannabis (Poisons and Narcotic Drugs Act, 1978) and one charge for possess cannabis (Misuse of Drugs Act, 1981, Western Australia). Data are presented separately for adults and juveniles (Table 14). It may be seen that the majority of cannabis related offences heard in the ACT Magistrates Court between 1990 and 1998 were for sale and supply.

Table 14
Number of cannabis related offences heard in the ACT Magistrates Court, 1990 - 4 November 1998

	Year								
	1990	1991	1992	1993	1994	1995	1996	1997	1998 (to 4 Nov)
Sale/supply offences	13	61	58	30	34	38	65	44	39
Sale/ supply of trafficable/ commercial quantity offences	0	0	7	4	10	6	13	2	7
Sale/supply to under 18 offences	0	4	7	7	4	4	9	1	3
Possess cannabis (WA legislation)	0	0	0	0	0	1	0	0	0
Total	13	65	72	41	48	49	87	47	49

Source: ACT Magistrates Court database.

Figure 27 depicts the number of cannabis sale/supply offences heard in the ACT Magistrate's Court between 1990 and 1998. The overall number of these offences has varied from year to year from a low of 13 in 1990 to a high of 87 in 1996. Data for 1998 only includes charges heard up until 4 November.

The regulation of cannabis possession, use and supply

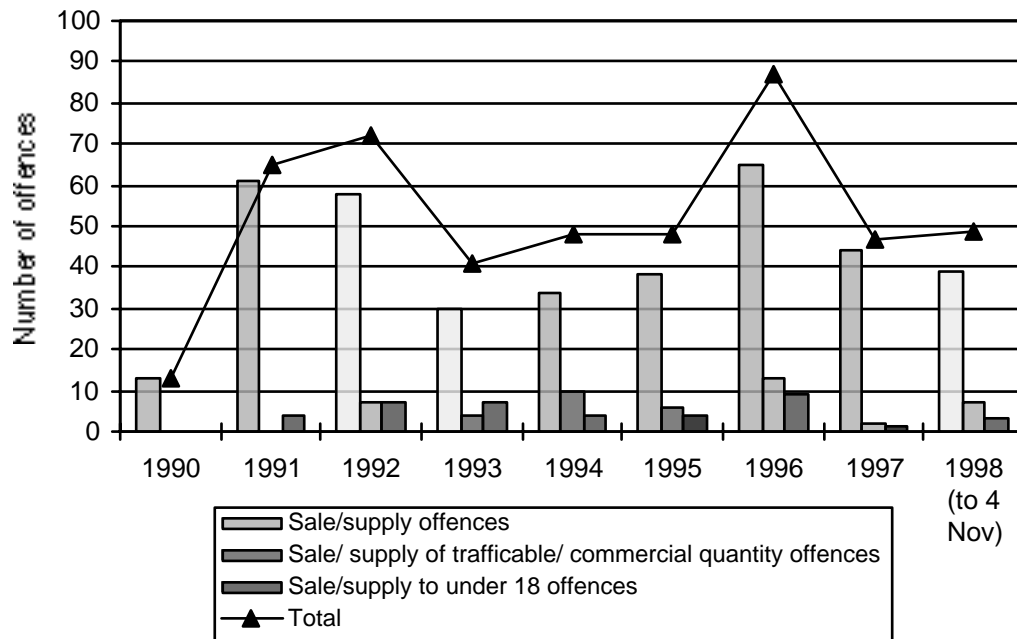


Figure 27: Number of sale/supply of cannabis offences heard in the ACT Magistrates Court, 1990 - 4 November 1998

Source: ACT Magistrates Court database.

As for adults, the greatest number of cannabis related charges heard in the ACT Children's Court were for sale and supply. Overall, there were very few charges heard (Table 15).

Table 15
Number of cannabis related offences heard in the ACT Children's Court, 1990 - 4 November 1998

	Year								
	1990	1991	1992	1993	1994	1995	1996	1997	1998 (to 4 Nov)
Sale/supply offences	1	0	0	0	6	4	13	12	0
Sale/ supply of trafficable/ commercial quantity offences	0	0	0	0	0	0	0	0	0
Sale/supply to under 18 offences	0	0	0	0	0	2	6	4	0
Use cannabis (Narcotic Act 1978)	0	0	0	1	0	0	1	0	0
Total	1	0	0	1	6	6	20	16	0

Source: ACT Magistrates Court database.

Western Australia

An analysis of data from Western Australia (WA) is important for a two main reasons. Firstly, the laws which apply to cannabis in WA are some of the most wide ranging in Australia and thus the data provide a good example of a high enforcement prohibition model. Secondly, the criminal career data base established and maintained by the Crime Research Centre (CRC) at the University of Western Australia allows for a comprehensive analysis of cannabis offenders in the justice system of a state operating a strict cannabis prohibition in a way that, to date, has not been possible elsewhere

Lenton and colleagues (Lenton, 1995; Lenton, Ferrante & Loh, 1996) investigated the Western Australian data concerning minor cannabis offences during the period 1990 – 1993. Lenton (1999) reported an update on much of this data for the period 1994 – 1996.

Police data

During 1993 cannabis charges comprised 12% of all charges issued by police and 85% of all drug charges. Ninety percent of cannabis charges were for minor offences. Half (49%) of the charges were for possession/use offences, 31% were for possession of implements and 14% were for make/grow offences, mostly of small amounts. Only 6.0% of charges were for the more serious offences of trafficking or ‘dealing’ as it is more commonly known. Lenton, Ferrante and Loh (1996) concluded that minor cannabis offences were responsible for the majority of the criminal justice resources devoted to drug offences. During the period 1990-1993 individuals charged for cannabis possession/use were most likely to be male (85%), non Aboriginal (94%) and adult (91%) (Lenton, 1995).

The overall number of cannabis related charges laid in 1993 was 9,272 which represents a rate of 553 charges per 100,000 head of population. Many people may have received more than one cannabis related charge throughout the year; a total of 3,670 distinct persons were charged with a cannabis offence as their most serious offence during the year (Lenton, 1995). There were 271 possess/use cannabis charges per 100,000 head of population (Atkinson & McDonald, 1995).

The picture for the period 1994 – 1996 was little different (Lenton, 1999). From 1994 to 1996 there were 23,898 cannabis related charges in Western Australia, which were brought against 9,240 persons. These comprised 12% of all charges issued and

82% of all drug charges, down from 89% in the period 1990–1993. Just under half (46%) of the cannabis charges were for possession/use, 33% were for possession of implements, 10% were for make/grow offences, and 7% were for trafficking. The proportion of possession and use charges which were cannabis related declined from 90% in 1990 to 71% in 1996. This was likely due to a growth in the use of other drugs over the period. During 1996, for 13% of the apprehensions or arrests for possession/use of cannabis, the person was held in custody prior to their court hearing.

Figures from the ABCI (1999) indicate that during the 1997/98 financial year 11,487 persons were arrested for cannabis, 62% for consumer as opposed to provider offences, although this is likely to be an underestimate given that all cultivation charges were classed, as provider offences (see Table 5).

The majority of cannabis possession/use offences from 1994 to 1996 were committed by males (85%), non-Aboriginals (93%), and adults (92%). Juveniles comprised a slightly larger proportion (10%) of those arrested for a possessing a smoking implement than for possession of cannabis itself (8%). Young adults (18 to 21 years of age) comprise 28% of all possession/use cannabis charges.

Court data

Lenton (1995) reported court data for both the juveniles and adults. During 1991 a total of 1,432 cannabis related charges were heard in the Children's Court or before a Children's Panel. This represents a rate of 87.5 charges per 100,000 head of population. This amounted to 3.6% of all charges laid (drug and non drug-related) and 90.6% of all drug charges. The majority of charges (54.5%) heard related to possession or use of cannabis while a third (33.4%) were for the possession of implements. Forty percent of the possession/use offences heard were dismissed, 32.3% resulted in a court order (non-custodial) and a fine was administered for 20.1% of charges.

During 1992 there were 9,518 cannabis related charges finalised in the Court of Petty Sessions (or 574.3 per 100,000 head of population). This was the equivalent of 12% of all charges (drug and non drug-related) and 86% of all drug-related charges. However, cases finalised in the lower courts where the cannabis related charge was the most serious offence involved only 4,715 distinct persons. As for juveniles, approximately half (52%) of the cannabis related matters involved possession/use.

Make grow offences accounted for 15% of cannabis related charges and trafficking for 4%. People charged with possession/use of cannabis were most likely to be male (85%), under 30 years of age (73%) and non Aboriginal (96%). Almost all of the possession/use offences heard received a conviction (Lenton, 1995).

Lenton (1999) reported that there were 22,247 cannabis related charges finalised in the lower court over the period 1993 to 1995, which comprised 9% of all charges and 84% of all drug charges finalised in the lower court. In 1995, just under half (47%) of the cannabis charges finalised were for possession/use, and 32% were for possession of implements, which respectively comprised 51% and 18% of distinct persons appearing before the lower court on cannabis-related charges. The vast majority (99%) of possession/use charges finalised from 1993 to 1995 resulted in a conviction, and of these, 92% resulted in a fine and 1% resulted in a custodial sentence. Over the period 1993 to 1995 males were responsible for 85% of all possession/use charges finalised in the lower court and Aboriginals only 6%. One in six (16%) of possession/use charges heard in the lower courts were against 18 to 20 year olds, with 75% of adults so charged being under 30 years of age.

Lenton (1999) reported a decrease in the number of people jailed as a result of fine defaulting, where the offender's most serious offence was possession and use of cannabis. For example, in 1994 41 of the 43 who were jailed with possession and use of cannabis as their most serious offence were jailed for fine default. In 1996 there were 3 such persons jailed, one of which was for fine default. This change appears to have occurred due to the introduction in WA of the Fines Enforcement System (introduced in 1995) for non-payment of fines, where those who do not pay fines can have goods seized, complete a community penalty or have their motor drivers license suspended rather than be placed in custody. While this is an improvement, clearly the number of people receiving a jail sentence for a minor cannabis offence has been extremely small (less than 1%), compared to the almost 99% who receive a criminal charge, roughly 40% of whom having no previous conviction and get a criminal record as a result. Furthermore the scheme does appear to have a number of drawbacks including compounding the disadvantage on those whom are least able to pay and resulting in an apparent increase in the number of unlicensed drivers on WA roads.

First Offenders

Those who are first arrested for a minor cannabis offence are of particular interest in evaluating the impact of current cannabis laws. If found guilty these 'first timers' acquire a criminal record as a direct result of their cannabis conviction. In 1993, 42% (860) of the 2,038 persons charged with cannabis possession/use as their most serious offence had never been arrested for any prior offence (Lenton, *et al.* (1996). That is, in that year, 2 to 3 West Australians per day acquired a criminal record as a direct result of a charge for possession of a small amount of cannabis for personal use. Lenton (1999) reported that from 1990 to 1995, 9% of first time arrestees charged with cannabis possession/use as their most serious offence were held in custody prior to appearing in court, but this decreased from 16% in 1990 to 5% in 1995.

An analysis of re-arrest statistics for the period 1984 to 1994 found that about half (48%) of the first offenders had not been re-arrested up to ten years later and when they were re-arrested this was mostly for other minor offences, 25% being driving a vehicle under the influence of alcohol or drugs, 19% for another possess/use cannabis offence, 5% for other minor drug offences and 4% for make/grow cannabis. It is unclear the extent to which these subsequent offending pattern reflects an increase in offending or an increase in arrest as those with a criminal record are more likely to attract the attention of arresting officers. Younger first-time arrested cannabis users were more likely to be re-arrested than older offenders. Lenton *et al.* (1996) concluded that, in accord with earlier research (Erickson, 1980), the vast majority of first time minor cannabis offenders were, in all respects apart from their cannabis use, a non-criminal section of the community

Research on the social impacts of the cannabis expiation notice scheme of South Australia

The origins of the second phase of the social impacts study has been described above. The components of the research included:

- An analysis of CEN, police and court data in SA (Christie, 1999). Data from this study has been presented above
- An analysis of police and court data in WA (Lenton, 1999). Data from this study has been presented above

- An investigation of the impacts of the CEN scheme on levels of cannabis use in SA (Donnelly, Hall & Christie, 1999)
- A telephone survey of the SA public regarding cannabis laws (Heale, Hawks & Lenton, in 1999)
- A study of the extent of the actual impacts of minor cannabis offenders in the SA system (Humeniuk, Brooks, Christie, Ali, & Lenton, 1999), a study minor cannabis offenders in the WA system (Lenton, Bennett & Heale, 1999), and a comparison of the two (Lenton, Christie, Humeniuk, Brooks, Bennett & Heale, 1999).
- A study of the attitudes, policies and practices of law enforcement and other criminal justice officers (Sutton & McMillan, 1999)
- An economic analysis of the costs associated with CEN (Brooks, Stothard, Moss, Christie, & Ali, 1999)
- A survey of the SA police and Judiciary, and a survey of employers in WA and SA (Allsop, Ask, Christie, Phillips, & Davies, 1999).

The main findings of the study are summarised below.

Interviews with South Australian offenders under the CEN scheme

The majority of the 202 respondents recruited for this study were Australian, non-aboriginal males in their twenties. Most were single, had no children, and lived with their partners, family or friends. The majority were heavy users of cannabis, although there was only a small degree of other drug use (excluding alcohol) (Humeniuk, Brooks, Christie, *et al.*, 1999). The sample consisted of 3 groups of approximately 70 subjects, one who had paid their CEN, one who had not and as a result had appeared in court and another group of SA cannabis users who had never been apprehended. Subjects had to have cleared their last CEN offence or received their last minor cannabis offence conviction at least 6 months and not more than 10 years prior to the interview date.

Humeniuk, Brooks, Christie, *et al.* (1999) found that heavier use of cannabis may be a risk factor for receiving a CEN, however, methodological issues suggest treating this finding with caution. While approximately seventy percent of respondents who had received a CEN used cannabis on a daily basis, compared with fifty percent of

respondents who had not been apprehended or received a CEN, recruitment methods employed may have increased the number of heavier users in the CEN sample.

The main source of supply of cannabis for 75% of the sample was someone else, whereas 25% reported their main source was cultivation of their own plants. Twenty percent both grew and purchased cannabis. Of the 45% who grew and had sold cannabis, most (80%) said that the profit contributed not more than a quarter of their income, suggesting that most people were growing for personal use, including family and friends, rather than commercially.

Two thirds of respondents were issued their CENs in a public place, the remainder in a private residence. Privately apprehended respondents were most likely to receive their CENs for possession of cannabis and cultivation. Whereas those apprehended in a public place were more likely to get a CEN for possession of cannabis and/or implements for using cannabis.

Of those who had dry cannabis seized, 75% were found with three grams or less (an average J-bag). Of those who were apprehended for cultivation, 50% had five or fewer plants, and 75% had ten or fewer plants. The authors concluded that the majority of these users were not involved in commercial criminal activity, and were more likely to possess or cultivate cannabis for personal use. However, they cautioned that it was possible that some respondents may have been involved in sale and supply of cannabis from cultivation of an expiable number of plants, thereby exploiting the CEN scheme. A modification to the current penalty scheme for cannabis was recommended which incorporated a 'graded' penalty scale for possession of both wet and dry cannabis (Humeniuk, Brooks, Christie, et al., 1999).

Respondents who had expiated mostly did so to avoid court and a criminal record. Most who failed to expiate reported that it was because of financial difficulties and many underestimated the amount they would ultimately have to pay. Their costs were significantly greater than the expiators due to heavier fines and court costs. In addition, three quarters of the non-expiators were not aware that they would get a criminal record if they did not expiate, suggesting that those who expiated may have had a better understanding of the consequences of not expiating.

(Humeniuk, Brooks, Christie, et al., 1999) found that many of the respondents had erroneous beliefs concerning the law and cannabis. Around one half thought that private use was legal, while one third believed that possession of 100 grams or less

was also legal. Two thirds were unaware that they would get a criminal record if the CEN were not paid by the due date and a similar proportion were not aware that the result of not expiating would be a court summons and additional court costs.

The social impact of a minor cannabis offence under strict prohibition – the case of Western Australia

Sixty-eight Western Australians who received a criminal record not more than 10 years ago as a result of a conviction for a simple (minor) cannabis offence were interviewed for approximately 2 hours to ascertain their experiences of the arrest and court process and its subsequent impact on their lives (Lenton, Bennett & Heale, 1999).

The sample was 72% male, and the average age at interview was 27.4 years. Three quarters of the sample said they were in employment of some kind. On average respondents had been using cannabis for 11.4 years, and 82% had used the drug in the four weeks prior to interview. Most had friends who used cannabis. On average respondents were interviewed about four years after their conviction. The sample was comparable in terms of sex and age at arrest with the population of West Australians convicted of cannabis possession and use as their first and most serious offence (Lenton, 1995).

Average age at arrest was 22.7 years. When arrested 47% were in a private dwelling, 25% were in a vehicle and 18% were in a public place. Most (71%) were charged with possession of cannabis, 53% with possession of a smoking implement and 23% with minor cultivation offences. Half were under the influence of cannabis when arrested (Lenton, Bennett & Heale, 1999).

While 73% said that police were lawful during the arrest and 41% said that they were respectful, 33% said that police were hostile and 57% were intimidated by police during the incident. In most cases attitudes towards the police were not changed by the incident, however, a large minority of respondents said that they developed less favourable attitudes. For example, 49% were less trusting of police and 40% were less respectful of police as a result of the incident (Lenton, Bennett & Heale, 1999).

The study found that a significant minority of the WA sample reported adverse social consequences of their cannabis conviction and these are discussed below.

Infringement versus conviction: the social impacts of a minor cannabis offence under a civil penalties system and strict prohibition in two Australian states

Lenton, Christie, Humeniuk, *et al.* (1999) compared the data described above (Lenton, Bennett & Heale, 1999) with data from a comparable group of sixty-eight South Australians interviewed by Humeniuk, Brooks, Christie, *et al.* (1999) who had received a CEN not more than 10 years ago .

Despite their transgression of the cannabis laws, the majority of both groups saw themselves as largely law abiding and had respect for the role of police as law enforcers and the rule of law in general. The majority of both groups also shared a lack of support for punitive drug laws, had a high level of support for cannabis use being legal, and slightly more than a third of each group supported commercial supply of cannabis remaining illegal. The majority of both groups also had positive views regarding cannabis. Most thought that it was a safe drug and that the benefits of cannabis outweighed the harms. Most saw it as much less harmful than a range of other substances including alcohol and tobacco (Lenton, Christie, Humeniuk, *et al.*, 1999).

Respondents in both groups were equally likely to report that they were friendly, respectful and cooperative toward the police when they were arrested or issued with their CEN. But 49% of the WA group, compared to only 18% of the expiators, said that they had become less trusting of police, and 43% of the WA group, compared to 15% of the SA expiators, were more fearful of police as a result. The greater loss of trust in the WA sample appeared in part due to the greater number of that group who were apprehended in a private residence, but did not appear to be due to other possible confounders. Half (49%) of the WA sample compared to 19% of the SA expiator group said they were in a private dwelling when they were apprehended by police.

There were no significant differences between the groups regarding the impact of the CEN or conviction on respondents drug use. Neither the CEN nor the cannabis conviction appeared to had much impact on subsequent cannabis use. For example, 91% of the SA expiator group and 71% of the WA group said that their cannabis use was not at all affected by their apprehension one month after. The vast majority of each group said that if they were caught again they would not stop using the drug.

These data suggest the application of the civil or criminal law did not reduce the cannabis use of the vast majority of this sample.

While 32% of WA respondents identified at least one negative employment consequence related to their cannabis conviction, only one (2%) of the expiators identified one consequence that was related to their CEN. This difference did not appear due to possible confounders. Only one SA expiator believed that they had lost a job because of their CEN. Nineteen percent of the WA group said they had not got at least one job applied for, 16% had been sacked from at least one job, and 9% had stopped applying for jobs when they believed or knew that they were likely to be asked whether they had a criminal record. On average employment consequences for the WA group occurred 8 months after conviction (Lenton, Christie, Humeniuk, et al., 1999).

A third (32%) of the WA group compared to none of the SA group reported subsequent criminal justice consequences of their cannabis apprehension and this did not appear to be due to possible confounders. Consequences for the WA sample included further police enquiries or questioning (19%) being found guilty of a non-cannabis related offence (13%) or another minor cannabis offence (9%). On average these consequences occurred 14 months after conviction.

There was a significant difference between the groups in terms of negative relationship consequences of conviction or CEN. Only 5% of the SA expiator group identified any negative relationship consequences of their CEN, while 20% of the WA group identified at least one negative relationship event related to their cannabis conviction. This result appeared in part due to the greater number of the WA group who were apprehended in a private residence, but was not due to other possible confounders. Among the expiators 3% described family disputes, and 2% said a friendship ended as a result. Among the WA group 16% identified family disputes, 6% stress in a primary relationship and 3% family estrangement. The first relationship consequence occurred, on average, 8 months after the CEN and 5 months after the arrest.

None of the respondents in the SA expiator group identified any negative accommodation consequences but 16% of the WA sample did so. These included a change of accommodation (12%), loss of work accommodation (4%) associated with loss of job due to the conviction. Once again, accommodation differences appeared

related to the impact of arrests which took place in a private residence which occurred in a greater number of cases in the WA sample, but did not appear to be due to other possible confounders. Residential consequences occurred on average 3 months after conviction.

There were no differences between the SA expiator and WA groups regarding the extent to which they, or others who knew them, saw themselves as a criminal as a result of the incident. In both groups, only a minority said they saw themselves as a criminal as a result of the incident. There was no significant difference between the groups in terms of negative travel effects of conviction or CEN. None of the expiators and five of the WA sample (7%) identified at least one negative travel consequence and a further 9% of the WA group were very concerned about this possibility in the future. It appeared that the time from apprehension to interview may not have been long enough for travel effects to be evident in a large enough number of the convicted sample to result in a significant result as 41% of the WA sample were interviewed within 38 months of conviction, yet the average duration to the first travel consequence was 39 months.

Effects of the CEN Scheme on levels and patterns of cannabis use in South Australia

The analysis by Donnelly, Hall and Christie (1999) of national population survey data indicates that over the 10 year period from 1985 there has been an increase nationally in self-reported lifetime cannabis use, with a greater degree of increase in South Australia than in the average of the other Australian states and territories. Between 1985 and 1995, the adjusted prevalence rates of ever having used cannabis increased in SA from 26% to 36%. There were also significant increases in Victoria (from 26% to 32%), Tasmania (from 21% to 33%) and New South Wales (from 26% to 33%). However, jurisdictions also differed in rates of change, with Victoria and Tasmania having similar rates of increase to South Australia. There was no statistically significant difference between SA and the rest of Australia in the rate of increase in weekly cannabis use. The largest increase in weekly cannabis use occurred in Tasmania between 1991 and 1995, where it increased from 2% to 7% (Donnelly, Hall & Christie, 1999). This suggests that even if South Australians were slightly more likely to have ever tried cannabis than those in other state, this did not result in higher

rates of regular use in that state (Donnelly, Hall & Christie, 1999; Ali, Christie, Lenton *et al.*, 1999).

However, the South Australian increase in lifetime cannabis use is unlikely to be due to the implementation of the cannabis infringement notice system which has operated in that state since 1987 because: (1) similar increases occurred in Tasmania and Victoria, where there was no change in the legal status of cannabis use over the period; (2) there was no differential change in weekly cannabis use in South Australia as compared with the rest of Australia, and (3) there was no greater increase in cannabis use among young adults aged 14 to 29 years in South Australia, which is the age group with the highest rates of initiation of cannabis use (Ali, Christie, Lenton *et al.*, 1999).

Public awareness, knowledge and attitudes regarding the CEN scheme in South Australia

Heale, Hawks and Lenton (1999) conducted a telephone survey of 605 residents of South Australia. Thirty nine percent of these reported ever having used cannabis, and 34% reported having the opportunity to use cannabis in the previous 12 months. The fortnightly use of cannabis was viewed as acceptable by 34% of the sample, yet the majority of respondents (77%) believed that cannabis is associated with health problems and with social problems (71%). Twenty two percent believed cannabis was associated with some health benefits and 70% felt that it had some legitimate medical uses.

Two thirds (65%) of the sample believed that many people use cannabis without experiencing serious problems, and roughly 50% believed that cannabis use did not necessarily lead to the use of other illicit drugs. Teenage use was disapproved of by 77% of the sample, while 90% agreed that driving ability would be diminished if the driver was affected by cannabis.

Whereas only 17% of respondents knew of the 'CEN scheme', 76% expressed a familiarity with the 'on-the-spot fine scheme'. A reasonable knowledge of the legal status of the non-expiable offences (that is, that they are illegal) contrasted with some confusion about the legal status of expiable offences, with 24% thinking that possession of less than 100 grams of cannabis was legal, and 53% believing that growing 3 plants was legal. A large percentage of respondents said that they did not

know the legal status of each of these offences. Few respondents were aware that two expiable offences involved some legal consequence. A higher percentage knew that the non-expiable offences involved some legal consequence. Only 3.3% of the sample had received a CEN (Heale, Hawks & Lenton, 1999).

While 80% felt that using cannabis for medical purposes should be legal, the vast majority thought that growing 15 plants, selling 25 grams for profit, possession of less than 100 grams by a juvenile and driving while affected by cannabis should remain illegal. Opinion was evenly divided as to whether the expiable offences of possessing of less than 100 grams of cannabis or growing 3 cannabis plants should be legal. Even among those supporting the continued illegal status of cannabis-related activities, the majority felt that a fine was the appropriate penalty for currently defined expiable minor offences.

On the question of whether respondents would wish to maintain the CEN scheme, render it more lenient or make it more restrictive, 43% were in favour of the status quo, 38% favoured making it stricter and 14% were in favour of making it more lenient. Of particular interest were the perceptions of the consequences of CEN. Whereas 40% felt that the level of other drug use in the general community had increased, 43% felt that the level of cannabis use in the general community had remained the same, and 32% felt that its use in public places had remained the same. Forty seven percent however felt that the level of cannabis use by teenagers had increased. Most (78%) of the sample agreed with a suggestion to reduce the maximum number of plants for which a CEN could be issued from 10 to 3 (Heale, Hawks & Lenton, 1999). This occurred in May 1999.

Costs associated with the operation of the CEN scheme in South Australia

Brooks, Stathard, Moss, Christie and Ali (1999) developed unit cost estimates for a number of potential penalty outcome pathways under the CEN scheme. Costs of issuing CENs were estimated from the time a CEN was actually handed to an offender; no allowance was made for the costs associated with detecting the offences, as these costs were considered very difficult to quantify, and subject to wide variation..

The study found that the unit cost of issuing a CEN including police time in issuing the notice, entering data onto computer, and other administrative tasks, was estimated

to be \$32.73. This was also assumed to be the cost of a finalised expiated CEN, as handling of full expiation payments added negligibly to this cost. If the CEN recipient was granted a community service order, instead of a fine, this substantially increased the unit cost to \$257.73 due to the cost associated with supervising such orders Brooks, Stathard, Moss, *et al.* (1999).

Unit costs were higher where CEN matters remained unpaid, and had to be prosecuted. Thus, a CEN which was not expiated, and resulted in a court hearing and conviction was estimated to cost \$51.80, if such a case was cleared by community service, the unit cost was \$276.82. Where non-payment of court-imposed fines resulted in a warrant being issued, the unit cost for cases which were eventually paid in full was estimated at \$90.75, the cost for such cases cleared via community service was \$315.74, and for cases cleared by imprisonment, the unit cost was \$601.74 (Brooks, Stathard, Moss, *et al.*, 1999).

A model for the annual cost of the CEN scheme was generated, based on approximations of the proportions of offenders within the various final outcome pathways. For the 16,321 CENs issued in 1995/96, with a 44% expiation rate, the total cost was estimated to be \$1.24 million. Revenue from CEN fees, fines and costs was estimated to have been \$1.68 million for that year. With a 10% increase in expiation rate (ie. to 54%), the total cost was estimated at \$1.11 million; with a 20% increase, \$0.98 million; and for a 30% increase, \$0.86 million. Brooks, Stathard, Moss, *et al.* (1999) concluded that the models showed that improving the rate of expiation would reduce costs, primarily due to the low costs associated with expiated notices.

When likely revenue from fees, fines and levies for these models is calculated, the total annual amount declines slightly: \$1.60 million for an expiation rate of 54%; \$1.52 million for a 64% rate; and \$1.45 million for a 74% rate. However, the total surplus of revenue over expenditure is higher for the higher expiation rates, resulting in greater savings to the state.

In order to model a comparison between the costs of the expiation system and total prohibition a model was generated which allowed for net-widening under the CEN scheme, such that it was assumed that around 7,500 minor cannabis offences would have been detected in SA in the 1995/96 financial year, rather than the 16,321 CEN offences detected. Even with this allowance, the total cost of the prohibition approach was estimated to be \$2.01 million, while revenue from fines and levies was estimated

to be \$1.0 million. The authors concluded that even with a relatively low rate of expiation, the CEN scheme had a much greater potential for cost savings to the state than does a prohibition scheme for minor cannabis offenders.

A review of law enforcement and other criminal justice attitudes, policies and practices regarding cannabis and cannabis laws in South Australia

Sutton and McMillan (1999) employed intensive one-to-one interviews and focus groups to collect the opinions about the CEN scheme of law enforcement and criminal justice personnel working in South Australia. Senior officials involved in dealing with the CEN scheme in the SA Police and other departments generally agreed that the CEN scheme should remain in place, as it provided an efficient way of dealing with minor cannabis offences and had advantages for offenders by avoiding a criminal conviction. However, some senior police, believed there was opportunity the 10 plant limit to be exploited by commercial cannabis cultivation enterprises spreading their operations across smaller plantations of 10 plants or fewer, while maximising the yields through sophisticated cultivation techniques. It was proposed that the maximum number of plants expiable under the CEN scheme be reduced from ten to three or four. As mentioned above, in May 1999 the number was reduced to three plants.

Two other approaches were proposed to deal with the problem without reducing the 10 plant limit. The first was for police to utilise the provision under the law to lay charges should they suspect a commercial operation. The second was that where police suspect that a commercial operation is taking advantage of the expiation provisions, police repeatedly issue CENs and seize plants and growing equipment to put an end to such operations (Sutton & McMillan, 1999).

Survey of peak employer groups: comparison of impacts of minor cannabis offences on employment in South Australia and Western Australia

A telephone survey (Allsop, Ask, Christie, Phillips & Davies, 1999) was conducted of a sample of 50 employers in SA and 40 in WA who were prominent or leading organisations in their respective industry to examine whether a minor cannabis conviction is an employment issue for peak employers. The aim of the research was to determine if there were differences in the extent of employer discrimination against cannabis users and/or offenders between these states, precisely because of the

differing legal systems. There were some differences between the two, with the WA sample having a higher proportion of mining organisations in the sample. Furthermore, the samples of employer organisations are likely to over-represent large employers and under-represent smaller employers. Also, a potential for bias exists, in that non-respondents to the survey may have differing attitudes to cannabis use than those employers who were interviewed.

No differences were found in the self-reported attitudes of employers in both SA and WA towards employing people with prior cannabis offences, with both groups reporting that they did not discriminate against such offenders. This is somewhat at odds with the reported experiences of cannabis offenders in the two states (Lenton, Bennett & Heale, 1999; Humeniuk, Brooks, Christie, *et al.*, 1999). It was clear that cannabis offending is not an important part of employer screening in many employment areas, although employers in both states were concerned about the potential risks associated with cannabis intoxication in the workplace, and the long term effects of cannabis use on work performance (Allsop, Ask, Christie, *et al.*, 1999).

Australian experience of legislative models – main points

- South Australia (in 1987), the Australian Capital Territory (in 1992) and the Northern Territory (in 1996) have each adopted *prohibition with civil penalties* approaches employing infringement notices whereby minor cannabis offences are dealt with by an ‘on the spot’ fine. The schemes differ in terms of the specific details of the offences, the levels of the fines imposed, the consequences of failing to pay within the specified period, and other procedural factors. However, what they share in common is that a criminal conviction is not recorded if the fine is paid within the prescribed period. In 1998 Victoria and Tasmania introduced cautioning systems for cannabis use, and in WA a trial of a limited cannabis cautioning scheme began in two police districts. Again there are differences between the intent and operation of the schemes.
- According to the Australian Bureau of Criminal intelligence figures approximately 73% of all persons in Australia arrested or given an infringement notice for cannabis during 1997/98 were charged with ‘consumer’ rather than ‘provider’ offences, although this may be an underestimate as all cultivation offences are classified as producer offences, regardless of the number of plants grown.

- In the main points below, Victorian, South Australian, and Western Australian data are presented separately from that for the other states and territories as. Good data is available on South Australia as the longest running example of an expiation notice system and Western Australia as an example of a total prohibition system.

Victoria

- The primary legislation concerning the prohibited status of cannabis use in Victoria is the *Drugs, Poisons and Controlled Substances Act 1981*, Section 3.8. The use or attempted use of cannabis is a summary offence (with a maximum penalty of \$500) and penalties for cannabis use are less than those for other specified drugs of dependence. Possession and cultivation of cannabis are indictable offences. Possession of less than 50 grams of cannabis not for trafficking (for personal use) carries a maximum penalty of \$500. Possession of 50 grams or more of cannabis not for trafficking carries a maximum penalty of \$3000, and/or 1 year imprisonment. Cultivation of cannabis, not for trafficking carries a maximum penalty of \$2000, and/or 1 year imprisonment. Under the Act, Possession of 250 grams of cannabis and cultivation of 10 plants are defined as ‘a trafficable quantity’ and are each treated as *prima facie* evidence of trafficking. The possession of paraphernalia does not constitute an offence in the state of Victoria. Under the Act, first time cannabis offenders appearing in court for a possession or use offence may be given a bond. If the conditions of the bond are complied with no conviction is recorded.
- Under the Victorian cannabis cautioning scheme police are able to issue a caution to adults detected in possession of/using less than 50 grams of cannabis. Individuals with prior drug offences are excluded, the person has to admit the offence and consent to being cautioned, and a caution cannot be issued to the same person on more than two occasions. After a successful six month trial in one police district the cannabis cautioning scheme was extended statewide from September 1998.
- Cannabis offences accounted for 7% of all charges for any offence in Victoria from January 1996 to June 1998. Persons charged with cannabis offences accounted for about 10% of all distinct persons so charged for any offence, and 69% of persons charged with a drug offence, over this counting period.

- During 1996 and 1997 there were approximately 6000 persons whose most serious cannabis offence was a possession/use offence per year. These persons comprised about 65% of all persons charged with cannabis offences.
- Juveniles accounted for fewer (7%) of cannabis charges than they did for all (drug and non-drug) charges (16%). Juveniles accounted for about 12% of persons charged with possession/use as a most serious offence, but were only 2% of those charged with cultivation and less than 1% of those charged with trafficking as a most serious offence.
- Males were generally more likely to be involved in all types of offending than females. From 1996 to 1998 males accounted for approximately 80% of charges laid for all offences, 84% of all drug charges and 84% of all cannabis charges.
- Unfortunately Magistrates' Courts data did not distinguish between cannabis offences and other drug-related offences until March 1998, and was therefore not available for this report.

South Australia

- The Cannabis Expiation Notice (CEN) scheme was introduced in South Australia in 1987. Under this scheme, persons detected committing a minor cannabis related offence may be issued with an infringement notice of between \$50 and \$150. If the notice is paid within the prescribed time period, the recipient does not have to go to court and no criminal conviction is recorded. The scheme does not apply to juveniles.
- The number of CENs issued has increased each year since the inception of the scheme from 6,200 in 1987/88 to 17,425 in 1993/94, before dropping to 16,321 in 1995/96. It seems that the increase noted is more likely to be due to changes in police practices than an escalation in the prevalence of cannabis use.
- The most common offence for which CENs are issued is possession of less than 25 grams of cannabis accounting for 36% of all CENs. Approximately half (50.5%) of all CENs issued were received by people in the 18 to 24 year old age group. The average value of CENs issued was about \$70.
- Only about 45% of CENs are expiated. This could be due to financial hardship, particularly for younger offenders and those who may have received multiple

CENs over time. Also, as it is probably more difficult for police to verify proof of identity at the time a CEN is issued to an offender, compared to traffic offences, where registration information can be used for follow-up, there may be more CEN matters lost to follow-up.

- About 92% of the unpaid CENs forwarded for prosecution resulted in a conviction.
- The rate of expiation of CEN offences may improve following recent changes including increasing the number of payment options (eg. instalment payments, community service). In addition, the provision of clearer and more detailed information on the consequences of failure to pay expiation fees (especially of criminal conviction) may help to improve expiation rates.

Western Australia

- From 1994 to 1996 cannabis related charges in Western Australia comprised 12% of all charges issued and 82% of all drug charges. Just under half (46%) of the cannabis charges were for possession/use, 33% were for possession of implements, 10% were for make/grow offences, and 7% were for trafficking.
- The vast majority (99%) of possession/use charges finalised from 1993 to 1995 resulted in a conviction, and of these, 92% resulted in a fine and 1% resulted in a custodial sentence.
- Those whose first conviction is for a minor cannabis offence are of particular interest in evaluating the impact of current cannabis laws as they acquire a criminal record as a direct result of their cannabis conviction. An analysis of re-arrest statistics for the period 1984 to 1994 found that 48% of the first offenders had not been re-arrested up to ten years later and when they were re-arrested this was mostly for other minor offences, 25% being driving a vehicle under the influence of alcohol or drugs, 19% for another possess/use cannabis offence, 5% for other minor drug offences and 4% for make/grow cannabis. Suggesting that, other than in regards to their cannabis use, they were largely a non-criminal section of the community.

Other Australian States and Territories

- Data from 1993 found 87% of all cannabis offences recorded in New South Wales were minor and these comprised 70% of all drug-related offences recorded. There were 13,710 minor cannabis charges heard in NSW local courts during 1993, 90% resulted in a criminal conviction being recorded and most (78%) received a fine.
- The offence of use (or self administer) cannabis does not apply in the state of Queensland. Furthermore, there is no distinction made (under Queensland law) between small amounts for personal use and quantities up to 500 grams (ie. a trafficable quantity). This limits meaningful analysis of Queensland cannabis data.
- In Tasmania, possession/use of cannabis charges were estimated to comprise 8.4% of all charges (drug and non drug-related) finalised in Tasmanian lower courts during 1993. Furthermore, they represented 61.3% of all drug charges.
- In July 1998 Tasmania introduced a 12 month trial cannabis cautioning system whereby police who detect a minor cannabis offence may opt to issue a caution rather than lay an official charge. However, as the system is discretionary, a court appearance may result for these offences.
- In 1996 changes to Northern Territory law meant that people detected cultivating not more than two cannabis plants or in possession of cannabis are issued with an on the spot fine (of \$200) rather than going to court. Failure to pay the fine results in the person being dealt with as having an outstanding debt to the court, rather than necessarily being charged with the underlying cannabis offence.
- According to the ABCI (1999), in the Northern Territory during the 1997-98 financial year, there were 217 persons issued with infringement notices for cannabis offences of which approximately 92% were for consumer, as opposed to provider, offences.
- Changes in the Australian Capital Territory which came into force in 1992 allowed police officers to issue a Simple Cannabis Offence Notice (SCON) to persons found cultivating five or less cannabis plants or in possession of not more than 25 grams of cannabis. Offenders receiving a SCON have the option to pay the specified fine of \$100 within a certain time and so avoid a court appearance and conviction. Offenders who fail to pay may be summonsed to court and face the possibility of a criminal conviction.

- From 1994 to 1998 the 72% of SCONs issued were for possession of cannabis, 27% for cultivation.

Research on the social impacts of the CEN scheme of South Australia

- Data from the South Australian sample suggested that heavier use of cannabis may be a risk factor for receiving a CEN, however, methodological issues suggest treating this finding with caution. While approximately seventy percent of respondents who had received a CEN used cannabis on a daily basis, compared with fifty percent of respondents who had not been apprehended or received a CEN, recruitment methods employed may have increased the number of heavier users in the CEN sample.
- In the South Australian sample, 75% of respondents said their main source of supply was someone else, whereas 25% reported their main source was cultivation of their own plants.
- South Australian respondents who had expiated mostly did so to avoid court and a criminal record. Most who failed to expiate reported that it was because of financial difficulties and many underestimated the amount they would ultimately have to pay. Three quarters of the non-expiators were not aware that they would get a criminal record if they did not expiate.
- Despite their transgression of the cannabis laws, the majority of both the South Australian CEN group and the Western Australian convicted groups saw themselves as largely law abiding and had respect for the role of police as law enforcers and the rule of law in general. The majority of both groups also shared a lack of support for punitive drug laws, had a high level of support for cannabis use being legal, and slightly more than a third of each group supported commercial supply of cannabis remaining illegal. The majority of both groups also had positive views regarding cannabis. Most thought that it was a safe drug and that the benefits of cannabis outweighed the harms.
- Neither the CEN nor the cannabis conviction appeared to have much impact on subsequent cannabis use. For example, 91% of the SA expiator group and 71% of the WA group said that their cannabis use was not at all affected by their

apprehension one month after. The vast majority of each group said that if they were caught again they would not stop using the drug.

- However, the adverse social consequences of a cannabis conviction far outweighed those of receiving an expiation notice. A significantly higher proportion of the WA convicted sample compared to the SA CEN sample reported adverse social consequences of being apprehended for a cannabis offence in terms of employment, further involvement with the criminal justice system, accommodation and relationship problems. Although the study failed to find differences in the impacts on capacity to travel overseas, this was likely due to methodological limitations.
- Over the 10 year period from 1985 there has been an increase nationally in self-reported lifetime (i.e. ever), cannabis use with a greater degree of increase in South Australia than in the average of the other Australian states and territories. However, because jurisdictions which had maintained strict cannabis prohibition recorded similar rates of increase to South Australia the South Australian increase in lifetime use was unlikely to be due to the decriminalisation which operates in that state. Even if South Australians were slightly more likely to have ever tried cannabis than those in other states, this did not result in higher rates of regular use in that state.
- A survey of 605 members of the SA public found 76% expressed a familiarity with the 'on-the-spot fine scheme' but there was some confusion about the legal status of expiable offences, with 24% thinking that possession of less than 100 grams of cannabis was legal, and 53% believing that growing 3 plants was legal. On the question of the future of the CEN scheme 43% were in favour of the status quo, 14% were in favour of making it more lenient and 38% favoured making it stricter.
- A cost analysis of the CEN scheme concluded that even with a relatively low rate of expiation, the CEN scheme had a much greater potential for cost savings to the state than does a prohibition scheme for minor cannabis offenders.
- An intensive interview study of law enforcement and criminal justice personnel working in South Australia found that senior officials in the SA Police and other departments generally agreed that the CEN scheme should remain in place, as it provided an efficient way of dealing with minor cannabis offences and had advantages for offenders by avoiding a criminal conviction. However, some senior

police, believed that the 10 plant limit was being exploited by commercial cannabis cultivation enterprises spreading their operations across smaller plantations.

- No differences were found in the self-reported attitudes of employers in both SA and WA towards employing people with prior cannabis offences, with both groups reporting that they did not discriminate against such offenders which was somewhat at odds with the reported experiences of cannabis offenders in the two states.

7 Deterrence effects, impacts on youth and gateway theories

In this chapter evidence and argument which addresses three key issues regarding legislative options for cannabis are presented. Specifically:

- Evidence is presented regarding the extent to which strict prohibition of cannabis has deterred cannabis use in the general community and among those who are convicted
- Evidence which bears on the effect of legislative change on the cannabis use of young people is presented
- The extent to which cannabis use is a gateway to other drug use is discussed.

Deterrence effect of legislation on cannabis use

It has been pointed out that some politicians and senior bureaucrats often voice the notion that at all costs we need to avoid ‘giving the wrong message’ when publicly responding to calls for reform of cannabis and other drug laws (Lenton, 1998). The argument being that reducing or removing penalties will in some way condone use and lead to an increased number of users and/or increased rates of use among those who do use the drug. When they do this politicians and others are invoking what criminologists refer to as the principle of general deterrence - the prevention of criminal activity by others, in this case the notion that the application of cannabis law is a deterrent to use for those who are not using. This contrasts with specific deterrence –which is the dissuasion of law breakers from further offending, in this case the notion that a cannabis conviction ought deter people so convicted from further use of the drug (Lenton, 1998).

General deterrence ‘giving the wrong message’ – some evidence

However, research casts doubts on effectiveness of cannabis law as a deterrent to use for those who are not using. The finding of various north American studies from the 1970’s indicated that cannabis laws had a low deterrent effect but produced high social costs (Erickson, 1993).

The best measure of the effectiveness of general deterrence is to compare surveys of rates of self reported cannabis use before and after legal changes have occurred, or across similar locations with different cannabis laws. Single (1989) reviewed the effects of the ‘decriminalisation’ of cannabis that occurred in 11 US states since 1973. Comparisons between so called ‘decriminalised’ and prohibitionist states showed that decriminalisation had not lead to higher rates of current cannabis use in those states.

More recently, in Australia the 1996 National Drug Strategy Household Survey Report 1995 compared rates of cannabis use between the Australian jurisdictions which at that time had removed criminal penalties for possession/use cannabis (SA and the ACT) with those which had not. These figures are presented in Table 16. The report concluded that the decriminalisation of cannabis did not lead to higher rates of use, with SA among the lowest current users, and rates in the ACT behind both the NT and WA in 1995 (Commonwealth of Australia, 1996).

Table 16
Cannabis use in Australia - ‘Decriminalised’ vs Prohibitionist jurisdictions 1995

Part of Australia	% ever tried	% used last 12 months
Where possess/use cannabis IS NOT a criminal offence	34	12
SA (n=600)	32	12
ACT (n=500)	42	16
Where possess/use cannabis IS a criminal offence	30	13
NSW (n=600)	30	13
VIC (n=600)	31	13
QLD (n=600)	26	10
WA (n=500)	37	16
TAS (n=300)	30	13
NT (n=250)	52	21

From Lenton (1998) Adapted from Commonwealth Department of Health and Family Services (1996)

As discussed above (page 152 to 153), a more recent analysis of National population survey data indicates that over the 10 year period from 1985 there has been an increase nationally in self-reported lifetime (i.e. ever), cannabis use with a greater degree of increase in South Australia than in the average of the other Australian states and territories. Between 1985 and 1995, the adjusted prevalence rates of ever having used cannabis increased in SA from 26% to 36%. There were also significant increases in Victoria (from 26% to 32%), Tasmania (from 21% to 33%) and New South Wales (from 26% to 33%). However, jurisdictions also differed in rates of change, with Victoria and Tasmania having similar rates of increase to South Australia (Donnelly, Hall & Christie, 1999). This is shown in Table 17. It was therefore concluded that the South Australian increase in ever having tried cannabis was unlikely to be due to the decriminalisation which operates in South Australia (Ali, Christie, Lenton *et al.*, 1999).

Table 17
Adjusted % of ever having used cannabis for each jurisdiction 1985–1995

Jurisdiction	1985	1988	1991	1993	1995	Trend
SA	25.7	24.5	31.5	37.4	36.3	.001
Tas	21.1	-	23.6	30.2	32.9	.001
Vic	26.4	23.1	28.2	31.2	32.0	.001
NSW	25.6	29.7	31.5	33.0	33.0	.01
WA	31.9	34.7	36.0	36.6	37.0	.05
Qld	26.6	24.0	27.0	30.5	29.5	.05
ACT	35.0	-	41.3	42.5	39.1	ns
NT	44.1	-	47.2	49.8	52.1	ns

From Donnelly, Hall & Christie (1999)

A comparison of recent cannabis use in the various jurisdictions found there was no statistically significant difference between SA and the rest of Australia in the rate of increase in weekly cannabis use. The largest increase in weekly cannabis use occurred in Tasmania between 1991 and 1995, where it increased from 2% to 7% (Donnelly, Hall & Christie, 1999). These results are presented in Table 18.

Taken together the ‘ever use’ and ‘last 12 months use’ data suggests that even if South Australians were slightly more likely to have ever tried cannabis than those in

other states, this did not result in higher rates of regular use in that state (Ali, Christie, Lenton *et al.*, 1999).

Table 18
Adjusted % of weekly cannabis usage within each jurisdiction 1988–1995

Jurisdiction	1988	1991	1993	1995	p
Tas	-	1.6	5.3	6.8	.02
WA	8.0	6.5	4.7	8.9	ns
SA	2.9	7.0	6.5	4.9	ns
ACT	-	3.7	6.2	3.2	ns
Qld	2.5	3.6	3.4	4.1	ns
NT	-	10.4	9.0	10.5	ns
NSW	4.3	4.5	3.7	4.3	ns
Vic	3.7	3.1	3.5	3.5	ns

From Lenton (1998). Adapted from Donnelly, Hall & Christie (1999)

Lenton, Ferrante and Loh (1996) noted that a considerable proportion of Western Australians have not been deterred from using cannabis by the existing criminal penalties. NHS survey data showed that 37% of West Australians aged 14 or over had tried cannabis, and 16% had used it in the past 12 months (Commonwealth of Australia, 1996). Which meant, based on ABS figures (Australian Bureau of Statistics, 1996) that approximately 500,000 West Australians aged 14 years and over had used cannabis at some time, with over 200,000 having used the drug in the past year.

Lenton (1998) concluded that together this research evidence fails to show that cannabis prohibition has a measurable deterrent effect on the rates of cannabis use in the general population. If removing criminal penalties is ‘giving the wrong message’ to the general community then it seems that few people are listening.

Specific deterrence – are those convicted deterred from using? some evidence

As noted above, if cannabis prohibition were to have a specific deterrence effect we would expect that people with a cannabis conviction ought to be deterred from further use of the drug.

In testing this hypothesis as part of research into the social impact of the laws that apply to cannabis Lenton, Bennett and Heale (1999) asked 68 West Australian’s who

had received their first criminal conviction as a result of a simple (minor) cannabis offence about their use of the drug in the six months before their arrest and the six months after their conviction. There were no significant differences between the rates of cannabis use between these two periods. The vast majority (87%) of the sample said the arrest and conviction had not resulted in them reducing their use of cannabis. Most continued to use despite their conviction because they enjoyed it (62%), didn't see it as a criminal activity (41%), saw it as a victimless crime (25%), or disagreed with the cannabis laws (22%) (Lenton, Bennett & Heale, 1999).

Why doesn't the law deter use?

Low levels of social support for cannabis prohibition

A number of authors have criticised the deterrence perspective for its over dependence on legal sanctions and have pointed to a range of social factors which may affect adherence to the law (Erickson, 1980). In particular, deterrence effects are undermined where punishments are generally perceived as disproportionate to the crimes and there are low levels of social support for the specific law (Bierne 1998).

In a survey of 400 members of the WA public in 1993 Lenton and Ovenden (1996). showed that 72% believed that penalties for personal use should be "like those for speeding in a motor vehicle, they should get a fine but not a criminal record". Sixty three percent believed that many people in the community use cannabis without experiencing serious problems due to its use, and 63% also believed that the court system was overburdened with minor cannabis offences

An analysis of police, court and justice system data for all cannabis offences in WA further supported the lack of public support for the laws that applied to minor cannabis offences. Lenton, Ferrante and Loh (1996) found that in 1993 90% of cannabis charges were for minor offences whereas only 6.0% were for 'dealing'. In 1992 98% of those persons appearing before the lower courts with cannabis possession/use as their most serious offence were found guilty and received a criminal conviction. In 1993, 42% (860) of the 2,038 persons charged with cannabis possession/use as their most serious offence had never been arrested for any prior offence. That is, in that year, 2 to 3 West Australians per day acquired a criminal

record as a direct result of a charge for possession of a small amount of cannabis for personal use.

The lack of social support for cannabis laws was also found among those 68 respondents in our study of the social impacts of a cannabis conviction (Lenton, Bennett & Heale, 1999). Although 81% believed that most laws are worth obeying and 85% believed that police deserve respect for maintaining law and order, 90% believed that cannabis use should be legal, and 84% did not believe that strong drug laws deter illicit drug use. Most (78%) of the sample regarded cannabis as a safe drug, and saw it as less harmful than alcohol (87%) and tobacco (69%).

The research has also shown that such a conviction can have a real and detrimental impact on people's lives. Up to 10 years after their conviction a 32% of the sample had at least one negative employment consequence (19% didn't get a job applied for; 16% lost a job, 9% stopped applying) as a result of their cannabis conviction. A third (32%) had further involvement with the criminal justice system (eg. further police enquiries) as a result of their cannabis conviction. One in five (20%) respondents identified at least one negative relationship event, and 16% identified at least one negative impact on their accommodation which they believed was related to their cannabis conviction. Seven percent identified at least one negative impact of their cannabis conviction on their capacity to travel overseas.

Poor certainty of arrest

Erickson (1993), Silverman (1976, cited in Erickson, 1993) and others have noted that the poor certainty of punishment for cannabis offences also serves to undermine any deterrent effects. Additionally it has been shown that the experience of arrest and conviction can *lower* the perceived risk of legal sanctions produced by committing criminal acts (Apospori, Alpert & Paternoster, 1992).

Looking at the WA situation, Lenton (1998) showed that based on National Household Survey figures somewhere around 200,000 West Australians will use cannabis in any one year and that there will be about 2,500 persons whose most serious offence will be a minor cannabis offence (Lenton, Ferrante & Loh, 1996). This means that in any one year, the likelihood of any user being convicted as a direct result of a minor cannabis offence is somewhere around 1.25%. Given the number of

doses of the drug consumed by the average cannabis user in any one year, the risk of conviction on any one using episode must be less than .01 of one percent.

Cannabis use and prevalence of other drug use

In Australia, Donnelly and Hall (1994) analysed 1993 NCADA National Household Survey data and concluded that, on the basis of these cross-sectional data, those who had used cannabis were roughly 30 times more likely than those who had not, to have used heroin and that the greater the frequency of cannabis use the higher the probability of them having tried other illicit drugs including heroin (even though 96% of cannabis users had not tried heroin).

In the Netherlands Cohen and Sas (1998) used household survey data from almost 9000 Amsterdam residents collected in 1990 and 1994 to test the theory that cannabis use will result in (heavy) use of other drugs. They found that cannabis use is almost a necessary condition for developing other drug use, but that 75% of cannabis users in Amsterdam do not report use of other drugs. They also tested the hypothesis that different kinds of drug policies might have on the use of cannabis and other drugs. As such they divided their sample into two cohorts, one born before 1958, who would have experienced enforced cannabis prohibition and the other born in 1958 or later who would have been 12 years or younger when the more liberalised cannabis laws came into place.

To test the 'stepping stone' hypothesis they formulated a set of eight testable hypotheses, none of which confirmed the stepping stone theory. The only data that approached confirmation were found with a minority of very heavy users of cannabis (Life time prevalence greater than 25 times and last month prevalence greater than 20 times).

In Amsterdam one in five (21.7%) cannabis users have had experience with cocaine. When they computed life time prevalence of cocaine, heroin, and ecstasy together, the proportion of cannabis users who have life time experience with one of those three other drugs rises to 24.9% (Table 19). But, three-quarters to two-thirds (dependent on age group) of those who have ever used cannabis have *never* used any other illicit drug. They concluded that the majority of all cannabis users are like the 'never cannabis users' whose experience with other drugs is negligible (0.5%). This

was true for the cannabis users born after 1958 who had never experienced active law enforcement against individual drug use, as well as those born before 1958 who were raised during the regime of active law enforcement of prohibitions against cannabis use.

Table 19
Lifetime prevalence (LTP), last 12 months prevalence (LYP) and last 30 days prevalence (LMP) of cocaine and heroin use of respondents of 1990 and 1994 household surveys in Amsterdam divided by old age cohort (born before 1958) and young age cohort (born in or after 1958). Total N = 8,809

	N	%	LTP of cocaine & heroin(%)	LYP of cocaine & heroin(%)	LMP of cocaine & heroin(%)
<i>LTP cannabis</i>					
Born in or after 1958	1,427	60.3	20.1	6.4	2.0
Born before 1958	941	39.7	25.5	4.7	2.1
Total	2,368	100.0	22.3	5.7	2.1
Chi square			9.22	2.74	0.00
			(p<.01)	n.s.	n.s.
<i>LTP cannabis < 25 times</i>					
Born in or after 1958	768	59.4	8.7	1.8	0.7
Born before 1958	524	40.6	10.3	1.7	0.4
Total	1,292	100.0	9.4	1.8	0.5
Chi square			0.74	0.01	0.07
			n.s.	n.s.	n.s.
<i>LTP cannabis ≥ 25 times + no LMP</i>					
Born in or after 1958	300	53.0	31.3	5.7	1.0
Born before 1958	266	47.0	35.7	4.1	1.5
Total	566	100.0	33.4	4.9	1.2
Chi square			1.03	0.41	0.03
			n.s.	n.s.	n.s.
<i>LTP cannabis ≥ 25 times + LMP cannabis 1-19 times</i>					
Born in or after 1958	253	71.5	34.0	15.4	4.3
Born before 1958	101	28.5	63.4	17.8	9.9
Total	354	100.0	42.4	16.1	5.9
Chi square			25.79	0.16	3.05
			(p<.001)	n.s.	n.s.
<i>LTP cannabis ≥ 25 times + LMP cannabis ≥ 20 times</i>					
Born in or after 1958	71	65.1	50.7	26.8	14.1

Born before 1958	38	34.9	60.5	15.8	10.5
Total	109	100.0	54.1	22.9	12.8
Chi square			.060	1.11	0.05
			n.s.	n.s.	n.s.

From Cohen & Sas (1998)

When they looked at the 21.7% of cannabis users that did develop experience with cocaine, they found that life time experience with cocaine increased as level of cannabis involvement increases. Cocaine experience exists with almost 22% of all cannabis users, but among the small group with the highest levels of cannabis use and experience, more than half (53%) had used cocaine. Life time experience with heroin was 4.2% for cannabis users in general but 17.4% for the small group of experienced current heavy cannabis users (4.7% of all cannabis users). They also added that out of the small number of cannabis users that gain life time experience with these other drugs, only very few develop into current or regular users.

In one of the few studies which attempted to measure the impact of changes in penalties for cannabis offences on harms associated with cannabis and other drug use, Model (1993) used hospital emergency room data to model the effect on substance abuse crises resulting in emergency room attendance in the 11 US states that decriminalised the possession of cannabis between 1973 and 1978. This suggested that decriminalisation of cannabis was accompanied by a significant decrease in emergency room episodes involving drugs other than cannabis, and an increase in cannabis episodes. Although possible bias in the data preclude firm conclusions, the results suggested that when cannabis was decriminalised illicit drug users tended to stay with the use of the less penalised cannabis, and move away from the use of the other more severely punished illicit drugs.

Effect of legislative change on the cannabis use of young people

Although the change in cannabis legislation introduced in South Australia in 1987 did not apply to juveniles there was some apprehension that a liberalisation of the laws may encourage cannabis use by young people. Three thousand South Australian students aged 11 to 16 years were surveyed in 1986, 1987, 1988 and 1989 (Donnelly, Oldenburg, Quine, Macaskill, Flaherty, Spooner & Lyle, 1992; Neill, Christie & Cormack, 1991). Cannabis consumption levels remained stable between 1986 and 1989, with 20% endorsing that they had ever tried cannabis and 6% having used

within the last week (Neill *et al.*, 1991). On the basis of this data it does not appear that the change to the cannabis laws impacted on cannabis use by secondary school students. Unfortunately, there is no data available concerning the prevalence of cannabis use amongst teenagers not attending school who may differ in drug taking behaviour from those remaining in formal education.

The analysis by Donnelly, Hall and Christie (1999) of trends in cannabis use among people aged 14 to 29 years showed that there was an Australia-wide increase in rates of lifetime cannabis use between 1985 and 1995 in this age group, the age group with highest rates of initiation and regular cannabis use (Donnelly & Hall, 1994). Furthermore, the rate of increase in lifetime cannabis use in this age group in South Australia did not differ from that in the rest of Australia and the rate was in the middle of the range of rates found among the different jurisdictions in the 1995 survey.

Regarding rates of weekly cannabis use among 14 to 29 year olds they found no consistent trends in any jurisdictions across the period from 1988 to 1995. However, this finding was qualified by the small samples within the weekly-using group at this age group which biased the results in favour of finding no differences. They concluded that much larger samples would be needed to rule out the possibility that there have been small differences in rates of increase between jurisdictions (Donnelly Hall & Christie, 1999).

In the Netherlands, MacCoun and Reuter (1997) described above (see page 91) reported that the increase in commercial access with the growth in numbers of cannabis *coffeeshops* in the from 1992 to 1996 may have increased cannabis use among adolescents. However, even after this increase, the rates of cannabis use in the Netherlands were the same as those in the USA which had a consistently more punitive policy towards cannabis use over the same period, and the increase among Dutch youth was similar to increases in Norway and the USA.

The ‘gateway theory’ of cannabis use: evidence and relevance to policy options

The idea that cannabis is a ‘gateway’ to the use of other ‘harder’ drugs has served as a major rationale for sustaining and escalating the prohibition of cannabis since the

1960's. For at least as long, liberals have dismissed the evidence for a gateway as spurious, trivial, or both (MacCoun, 1998).

The gateway theory or 'theories' are not a well-articulated set of linked hypotheses or clearly defined intervening mechanisms. Rather they are attempts to explain the basic empirical observation that most poly drug users began their illicit drug use with cannabis. The extent to which this constitutes a 'gateway' depends on what is meant by the term, what are the proposed underlying mechanisms, and the implications of these. Some of the more deterministic versions of the gateway phenomenon are easily refuted. Alternative explanations involving more complex sociological and psychological explanations appear to be more plausible. MacCoun (1998) has offered seven possible interpretations of the evidence that cannabis use tends to precede the use of other 'harder' drugs for those people that go on to use these. The discussion below is based around MacCoun's (1998) classification of the different interpretations:

1. *Cannabis use inexorably (with high probability) leads to the use of other 'harder' drugs.*

In its original sense, The 'gateway theory' of cannabis use referred to the proposition that cannabis use inexorably leads to the use of more dangerous or socially unacceptable drugs. This is what is referred to as the 'stepping-stone' theory or hypothesis by the Victorian Drugs and Crime Prevention Committee (DCPC, 1997). When it initially appeared in policy debates in the U.S. in the 1960s, the stepping-stone theory focused on the connection between cannabis use and LSD. Now it refers primarily to the connection between cannabis use and cocaine or heroin use (Zimmer & Morgan, 1998).

Clearly this proposition is easily refuted. As was shown in the previous section, most cannabis users do not go on to use other illicit drugs. However, MacCoun (1998) notes that this very deterministic notion of causality is too crude for most human activities and as such, the fact that most cannabis users never use 'hard' drugs is not enough on its own to rule out the possibility that there may be some causal relationship between cannabis and other drug use.

2. *Almost all heroin and cocaine users first used cannabis, and so cannabis must*

be a stepping stone toward hard drug use.

The first part of this proposition is clearly true. There is no doubt that most users of heroin, cocaine, LSD and other 'hard' drugs began their use of illicit drugs by using cannabis. The use of cannabis is strongly associated with the likelihood of using other illicit drugs. Furthermore, the higher the level of cannabis use, the higher the likelihood and level of other illicit drug use. This relationship has been consistently found in the U.S. (Kandel *et al.*, 1974; Single *et al.*, 1974), Canada (LeDain, 1972) and Australia (Donnelly & Hall, 1994). However, as has been shown in the previous section, the relatively high risk factor of heroin, cocaine or other illicit drug use associated with cannabis use occurs not because many cannabis users go on to use these drugs, but rather because so few users of other illicit drugs did not first try cannabis. As to the second part of the proposition, Zimmer and Morgan (1998) point out that just as almost all motorcycle riders first ride bicycles, almost all users of other illicit drugs first try cannabis. Just as one cannot therefore conclude that bicycle riding causes motorcycle riding, so too one cannot conclude that cannabis use somehow causes the use of other illicit drugs.

As a consequence of the evidence disproving a causal link between cannabis use and 'harder' drug use, a more modest and refined gateway hypothesis has been articulated. For example, The Victorian Drugs and Crime Prevention Committee distinguished the 'gateway phenomenon' from the 'stepping-stone' theory of drug use 'with which it is often confused' (DCPC 1997):

The [gateway] phenomenon relates to the way drug use has been observed to progress sequentially through a number of stages between adolescence and young adulthood. The first stage in the sequence is early adolescent use of tobacco and alcohol, the next is marijuana use, and the last is the use of harder illicit drugs (such as 'pills', cocaine, or heroin).(p.145).

As such this view holds that there are two 'gates' in the gateway process the first from alcohol and tobacco use to cannabis, and the second from cannabis use to that of the 'harder' illicit. The report continues:

The research does not support the stepping-stone view that alcohol or tobacco leads to marijuana use, and marijuana use leads to harder illicit drug use. The research doesn't strongly support [this] stepping-stone view, or that there is a causal connection between the drug use stages. The gateway claim is not that all or most marijuana users are likely to go on to harder drug use. It is the (weaker) claim that most youth who have gone on to a later stage of drug use (eg., hard drugs) have gone through the previous stage....The gateway hypothesis claims merely that drug use at any level is

unlikely to occur without drug use at the previous level (eg., marijuana). (p.146).

However, this account, while avoiding the problems of more deterministic explanations by not attributing a causal role to cannabis, is limited in that it says nothing about alternative explanations to account for the observed phenomenon.

3. Cannabis and other drug use may both be related to a third factor.

It is conceivable that the correlation between cannabis use and use of heroin or cocaine is due to some other factor or factors. Correlation is necessary but not sufficient to establish causality (MacCoun, 1998). Cannabis use and the use of other illicit drugs are related to a similar set of socio-demographic and personality variables such as poor future career or income prospects, and a low investment in social values (Schaefer Commission, Marihuana, 1972; LeDain, 1972). Some researchers have noted that, for example, cigarette smoking youth may be more likely to take risks of all kinds, and that it is this rebelliousness which is the cause of other illicit drug use, rather than the smoking itself (Torabi, Bailey & Majd-jabbari, 1993). Lynskey and Hall (1998) note that young people who use cannabis are also likely to report sexual risk taking, criminal offending and mental health problems and that much of these associations arise from adverse social and individual factors which increase the risk of a variety of adverse consequences, including subsequent use of other drugs. The use of cannabis and other illicit drugs may well be mutually reinforcing, but the real cause of any type of illicit drug use is likely to be a complex set of underlying personality and social determinants.

Through the related 'selective recruitment' hypothesis those adolescents who are predisposed to risk taking and non-conformity are considered more likely to use drugs and the observed 'sequence' of drug use is a function of those drugs which are more widely available being used first and those which are less available and more disapproved of being used later in the sequence. If this were the case then it is possible that if currently more available drugs like cannabis were less available, then non-conformist youth would in essence skip the use of cannabis, and move directly into the use of other 'harder drugs'. Indeed there is evidence that the relationship between cannabis use and the use of other illicit drugs varies in different places or in the same place at different times, and there are several examples where trends in cannabis use are unrelated to trends in heroin, cocaine or LSD use (Zimmer &

Morgan, 1998). For example, cocaine use peaked in the U.S. in the mid-1980s during a period of declining cannabis use.

4. *Cannabis use might not cause harder drug use, but it serves as an early warning of later use.*

This is the notion that even if cannabis does not cause other drug use, it predicts it and therefore can be used as an early warning signal to indicate those who may be at risk of use of harder drugs. However, as MacCoun (1998) points out, although the data support this interpretation, they also show that the diagnostic value of cannabis use is limited, because as a signal, cannabis mostly generates false alarms. The majority of those who ever use cannabis never try harder drugs, and of those who do, few become regular or problematic users. On one hand, longitudinal research does indicate that early onset and/or high frequency of cannabis use are more reliable signals of subsequent problems with other drugs. Yet, many adolescents who experiment with cannabis tend to do well at school and do not have a high incidence of mental health problems (Shedler & Block, 1990, as cited in MacCoun, 1998).

Even if heavy, or early onset cannabis use is a *predictor* of later use of drugs like cocaine or heroin, it does not follow that identifying heavy or young users of cannabis and helping them to reduce or delay their cannabis use, by drug education for example, will reduce harder drug use at a later stage. It is important to acknowledge that this argument would only necessarily hold if there *were a causal relationship* between early or heavy cannabis use and later use of drugs like heroin or cocaine, rather than it being due to a third factor, or factors. The heavy cannabis use and the later use of 'harder drugs' might each be the result of sociodemographic or personality factors which themselves would need to be addressed, if indeed this were possible.

5. *Cannabis use is a 'tantaliser' which lures young minds into experimenting with ever more intriguing varieties of intoxication .*

According to MacCoun (1998), even if plausible on face value, there has been little scientific evidence for this proposition, although much was made of two recent articles in *Science* (Rodríguez de Fonseca, Carrera, Navarro *et al.*, 1997; Tanda, Pontieri & Chiara, 1997) which found that cannabis activated neurochemical processes in the rat brain that respond in qualitatively similar ways to cocaine, heroin,

tobacco, and alcohol. This was interpreted in the popular press, after a media release from America's National Institute on Drug Abuse (NIDA), as suggesting that there was a biological link between cannabis use and other drug use (Coffin, 1997). However, it is clear that almost any psychological experience or phenomenon has a neurochemical effect or antecedent. That does not mean that causality has been established. Furthermore, Coffin (1997) has questioned the use of the rat as a model for humans where cannabis is concerned primarily because rats will not self administer any cannabinoid.

6. Apparently safe experiences with cannabis might undermine the perceived health and legal riskiness of using other drugs.

As MacCoun (1998) notes, if one's experiences fail to confirm the dire predictions of cannabis prevention programs based on scare tactics and misinformation about health effects and the legal risks, which greatly differs from the experience of most users, then this could discredit warning messages about the dangers of cocaine or heroin. If this is the case then perhaps public information campaigns should distinguish cannabis from more dangerous drugs and ensure that they provide credible and balanced information about risks rather than exaggerated scare tactics. MacCoun (1998) notes that the likelihood of being apprehended could be drastically increased by mandatory drug testing, for example, however, this is likely to be socially unacceptable. Alternatively, he notes, the gateway could be undermined by decriminalising or legalising cannabis.

7. Experience with cannabis might indirectly lead to hard drug use, by bringing casual experimenters into contact with dealers in hard drugs.

One of the most important common underlying factors to both cannabis use and the use of other drugs is involvement in a social network where there is opportunity to use a variety of illicit drugs. As stated by Blackwell and Erickson (1988):

The processes involved are very human, and therefore also very social. They reflect involvement in friendship networks that at first include those who use only cannabis, but widen to include users of other drugs. That most people have never tried LSD or heroin should come as no surprise, since most people have never been given the opportunity to accept or refuse. These are relatively rare illegal commodities that even cannabis users may not encounter. One needs using friends before a decision can be made for or against personal use. (p.133).

According to the ‘subcultural theory of drug escalation’ proposed by Goode (1971) and Johnson (1973), cannabis use relates to the use of other illicit drugs not because of any properties of the drug itself but, rather, because cannabis use introduces the user into a drug-using subculture where other illicit drugs are available. According to this view, involvement in illicit marketing is the crucial link in drug escalation. The subcultural theory has been empirically tested and partially verified. In a sample of New York State high school students, it was found that most of the relationship between cannabis use and the use of other illicit drugs disappeared when involvement in buying and selling was taken into account (Single & Kandel, 1978). Cannabis users who did not become involved in illicit marketing were not more likely to begin using other illicit drugs.

This has important implications to cannabis policy. Contrary to the gateway theories, the subcultural theory of drug escalation indicates that the prohibition of cannabis, by forcing users into the illicit drug market, actually promotes rather than inhibits escalation of use to other illicit drugs. Indeed, the separation of the cannabis market from other illicit drugs is the cornerstone of the Dutch system of cannabis control whereby cannabis and hashish are made available under strict control in licensed coffeeshops.

Conclusion

According to MacCoun (1998) more research is needed to definitively answer the questions about the underlying mechanisms and implications of the observation that most users of harder drugs have first used cannabis. Further research on potential gateway mechanisms could include: cross-sectional studies employing improved statistical controls for background factors common to both cannabis harder drug use; and new longitudinal studies on cannabis experience and its effects on the transition to hard drug use which consider the relative influence of changes in peer networks, drug dealing sources, perceived health and legal risks, and so on. To slightly paraphrase MacCoun (1998), based on evidence to date, absolute claims that the either the gateway phenomenon is a myth, or that it is real and necessitates either further prohibition, or indeed decriminalisation or legalisation of cannabis, are going beyond the data and have got more to do with one’s politics than the evidence.

Having said that, it is possible to draw some conclusions which are evidenced based. While there is undoubtedly a strong statistical relationship between cannabis use and the use of other drugs, most cannabis users do not progress to other drugs, licit drugs such as alcohol and tobacco relate just as strongly as cannabis to other illicit drug use, and trends in cannabis do not always relate to trends regarding other illicit drugs. The relationship between cannabis and other illicit drug use appears not to be causal but rather a spurious relationship arising from the fact that both cannabis and other illicit drug use likely share many common underlying causes. Cannabis use and the use of other illicit drugs are related to a similar set of complex underlying socio-demographic and personality variables.

The Australian and Dutch evidence in the previous section suggests that heavier users of cannabis were more likely to also have used ‘harder drugs’ like heroin and cocaine. This does not mean the heavy use of cannabis itself *caused* later use of other drugs. Rather, it is more likely because either (1) those heavy cannabis users and users of ‘hard drugs’ shared an underlying characteristics (eg. rebelliousness, stimulus seeking, poor economic prospects etc.), and or (2) frequent involvement in the cannabis market exposed them to many opportunities to use other drugs. From an intervention perspective all the gateway phenomenon would indicate is that we should see heavy cannabis users as being at higher risk of harder drug use. That is, heavy cannabis use may be a marker for other drug use but it does not follow that it therefore leads to other drug use. Clearly, this suggests that any intervention which is offered to those at risk should not simply aim at avoiding or stopping cannabis use but should address a range of possible underlying factors.

Deterrence effects, impacts on youth and gateway theories – main points

- Studies of the 11 American states which decriminalised cannabis use and of South Australia and the Australian Capital Territory which have also removed criminal penalties for the possession and use of cannabis found that the prevalence of current use did not increase in these jurisdictions due to the change in the law.

- Conversely, jurisdictions which have retained total prohibition such as Western Australia have not been able to deter a substantial proportion of residents from using cannabis.
- A study of 68 convicted cannabis users in Western Australia found that the majority did not change their rate of cannabis use as a consequence of their legal involvement. However, the study did show that the criminal conviction had a real and detrimental effect on people's lives in areas such as employment and further involvement with the police.
- The convicted cannabis users studied indicated that the majority believed most laws are worth obeying and that police are deserving of respect for maintaining law and order. However, 90% favoured legalisation of cannabis. This suggests that many convicted cannabis users have a respect for the law in general, but disagree with the laws pertaining to cannabis use.
- A West Australian public survey found 72% of the sample thought the penalty for personal use should be "like those for speeding in a motor vehicle, they should get a fine but not a criminal record".
- Dutch research has found that while most 'hard drug' users had also used cannabis, the majority of cannabis users had no experience in the use of other illicit drugs. This may be viewed as evidence against the stepping stone theory of drug use.
- A study of South Australian school children found no increase in the prevalence of cannabis use between 1986 and 1989, although the Cannabis Expiation Notice Scheme was introduced in 1987.
- While there is undoubtedly a strong statistical relationship between cannabis use and the use of other drugs, most cannabis users do not progress to other drugs, licit drugs such as alcohol and tobacco relate just as strongly as cannabis to other illicit drug use, and trends in cannabis do not always relate to trends regarding other illicit drugs.
- Heavy cannabis use may be a marker for other drug use but it does not follow that it therefore *caused* the other drug use. More plausibly, either: (1) heavy cannabis users and users of 'hard drugs' shared an underlying personal or social vulnerability factors (eg. rebelliousness, stimulus seeking, poor economic prospects etc.); and or (2) frequent involvement in the cannabis market exposed heavy cannabis users to

many opportunities to use other drugs. Therefore, interventions offered to those at risk should not simply aim at avoiding or stopping cannabis use but should address a range of possible underlying factors.

8 Considering a new model for the regulation of cannabis possession, use and supply in Victoria

In this Chapter a new model for cannabis possession, use and supply is presented along with the rationale for the suggested changes. Specifically the chapter:

- Briefly addresses the issue of the assessment of the Victorian Government's Turning the Tide Initiative
- Compares the most viable legislative options for the Victorian context in terms of their evidence-based and conceptual advantages and disadvantages
- Presents the recommended model for Victoria along with a discussion of the principles which underlie it, and suggestions for its evaluation.

Evaluating turning the tide - what should count as sufficient or satisfactory reduction of drug-related harm?

This section relates primarily to the issue of establishing whether the education, treatment and law enforcement strategies identified in 'Turning the Tide' (TTT) have 'worked'. We recognise that a decision as to whether or not these other strategies have worked is both a political and an empirical one. We are aware that many of the specific initiatives in TTT included both process and outcome evaluation plans as well as specific and measurable goals. In this discussion document we have suggested some of the kinds of indicators which could inform evaluation of the strategy insofar as it relates to reducing cannabis related harm. These would include cannabis use, health and treatment data, and criminal justice data, as described in Chapters 2 and 6, in addition to the types of information that might gauge public opinion, including

surveys of the general public. Suggestions for evaluating the impact of the implementation of the recommended model in Victoria, as outlined on pages 211 to 217, may also inform the evaluation of TTT initiatives. However, there are a number of problems with attempting to conduct ‘post-hoc’ evaluations of such programs. These include:

- The retrospective evaluation of existing data sets limits the extent to which changes can be attributed to interventions such as those specified in TTT.
- Many specific and important areas of enquiry may not be included in data that has been collected for other purposes.
- The time periods within which data have been collected may not be appropriate for determining the effectiveness of the strategies being evaluated.
- Methodologies employed in routinely undertaken data collections can change, thus confounding the interpretation of trends observed over time.

Comparative assessment of the most viable regulatory options

In this Section we summarise the likely advantages and disadvantages of those models which we regard as most viable in the Australian context after taking into account the impact of the International Treaties (see pages 105 to 106).

It does not appear to us to be practical to recommend an option which is in breach of generally accepted interpretations of the international treaties. While the review of the treaties and the situation in other countries has shown that it may be possible to have a de facto system of regulation, such as that which exists in the Netherlands, whereby laws criminalising cannabis are retained but not enforced, it is clear that there must be a considerable amount of political will to support such a system in the face of pressure from within and without. Unless there is a recognised level of political and public support for the view that domestic drug policy should not be dictated by international treaties obligations, any proposed model should clearly be compatible with international treaty obligations. The *partial prohibition* approach which does not treat possession of a personal use amount as an offence does not meet this criterion. However, the *prohibition with civil penalties* approach, which to date applies in three Australian states and territories, has been shown to be consistent with the international treaties.

The models compared here are total prohibition, prohibition with an expediency principle, and prohibition with civil penalties. Strengths and weaknesses are organised into those which are based on research or other evidence and those which are conceptual, theoretical or likely, but where there is no direct evidence. The comparison presented is a further development of that offered by McDonald *et al.* (1994).

Total prohibition

Advantages

Evidence based

- The status quo in many jurisdictions. Most jurisdictions around the world apply a total prohibition legislative and regulatory model to cannabis and other drugs. It could be argued that costs and benefits of such a system are well understood and that any change to the system is too risky. However, the recent work on cannabis law in Australia (Ali, Christie, Lenton *et al.*, 1999) shows that until recently the costs of the system have not been well monitored, and the benefits of the system may not be as great as some believe.
- Obviously consistent with the spirit and letter of the international conventions. There is no doubt that the total prohibition approach characterised by criminal penalties and strict enforcement is well within even the most conservative interpretation of the international drug conventions (McDonald *et al.*, 1994; Krajewski, 1999).

Conceptual or theoretical

- At a macro level gives a clear and unambiguous message of opposition to cannabis use. Some conservative policy makers and other members of the community justify the maintenance of cannabis prohibition as they claim it gives a clear signal that use of the drug is not condoned. However, research questions the extent to which this 'message' prevents cannabis use in the general community (Lenton, 1998).

Disadvantages

Evidence based

- A number of studies have found there is little evidence that total prohibition has had a general deterrence effect for a great many members of the general population (Erickson, 1993; Single, 1989; Donnelly, Hall & Christie, 1999). This appears to be because community support for applying criminal penalties to minor cannabis offences is low (Lenton & Ovenden, 1996), and the probability of being apprehended for these offences is much less than that generally considered likely to have an effective deterrent effect (Erickson, 1993; Lenton, Ferrante & Loh, 1996).
- There is some research evidence that a conviction for a minor cannabis offence does not deter the vast majority of those so convicted from further use of the drug. Cannabis use was continued because users enjoyed it, didn't see it as a crime, and disagreed with the laws which prohibited it (Lenton, Bennett & Heale, 1999).
- There is some research evidence that a conviction for a minor cannabis offence can have a real and detrimental impact on subsequent employment, further involvement with the criminal justice system, relationships and accommodation for a significant minority of those so convicted (Lenton, Bennett & Heale, 1999). There is suggestive research evidence and good procedural evidence that a conviction can also adversely effect one's capacity to travel to some countries including the USA and Canada (Lenton, Bennett & Heale, 1999).
- There is research evidence that a large proportion of the general public believe that many people in the community use cannabis without experiencing serious problems due to its use, and that the court system is overburdened with minor cannabis offences (Lenton & Ovenden, 1996).

Conceptual or theoretical

- Total prohibition options rarely recognise the need to treat drugs with different harm profiles differently. As such the opportunity to selectively apply the law on harm reduction grounds and give different signals to the community about the

acceptability of various drugs is lost (van Vliet, 1988, cited in McDonald *et al.*, 1994).

- In the application of total prohibition options, moral arguments are often confused with arguments about the consequences of drug use, which has contributed to the development of unachievable policy goals and a failure to consider the harms caused by the system that enforces them (McDonald *et al.*, 1994).
- The total prohibition of cannabis is seen as contradictory to the treatment of the legal drugs - alcohol and tobacco - which are recognised by many as being at least as harmful as cannabis (Hall, Solowij & Lemon, 1994). While there are clearly lessons to be learned from mistakes that have been made in regulating these legal recreational drugs there are opportunities for better controls on regulating cannabis supply and raising revenue from taxing its production, distribution and purchase for consumption which would be possible in a non-prohibitionist system. Revenue can also be made from infringement notices paid under a *prohibition with civil penalties* model (Brooks *et al.*, 1999). It would be possible to re-direct revenue raised into treatment programs for cannabis dependence and other drug problems.

Legislative prohibition with an expediency principle

Advantages

Evidence based

- There is evidence that a system of cannabis supply can be established which largely separates the cannabis market from that for other illicit and potentially more harmful substances (McDonald *et al.*, 1994).
- While the system operating in the Netherlands is in apparent conflict with the spirit of international conventions which expressly prohibit commercial sale and supply of cannabis, the Dutch do in fact maintain legislative prohibition. This is an example of a pragmatic approach which permits discretion about whether or not and how such laws are enforced at a local level. The system allows drug policy implementation to be responsive to local community attitudes.

- The Dutch system has made considerable savings in law enforcement and criminal justice system budgets by not processing large numbers of minor cannabis offenders. The distribution system is also largely free from the violence evident in criminal supply networks which operate in other countries where the legislative prohibition on cannabis is enforced (McDonald *et al.*, 1994).

Conceptual or theoretical

- Recognises that there is no monolithic 'drug problem' but rather a series of complex and interrelated social problems to which law enforcement and the criminal law cannot be a complete solution.
- Commenting on the Netherlands experience McDonald *et al.* (1994) note that the effect of separating cannabis from other drugs has had the effect of making drug problems more manageable.
- The Netherlands experience has shown that it is possible to 'normalise' and 'culturally integrate' cannabis use, recognising that the use of some intoxicants is natural to all human societies and the goal of drug policy ought to be to reduce the problems associated with it rather than the unrealistic goal of eradication of all cannabis and other drug use (McDonald *et al.*, 1994).
- Cohen (1988) has suggested that in the Netherlands the knowledge of how to control one's cannabis use has been inconspicuously integrated into youth culture because the development of drug use rules was not pushed from the mainstream into deviant subcultures. Thus, similar parental and social controls to those which shape responsible drinking practices apply to the use of cannabis.

Disadvantages

Evidence based

- In the Netherlands there is evidence suggesting that the growth in cannabis *coffeeshops*, which has been termed 'defacto legalisation', may have resulted in a growth in cannabis use among adolescents, but that this growth has put the rates of cannabis use no higher than that in the USA with its more punitive legislative regime towards cannabis (MacCoun & Reuter, 1997).

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- The Netherlands has experienced international pressure from the European Union, international organisations (primarily the United Nations Drug Control Program), the USA, some of its European neighbours, and other countries which adopt a prohibitionist approach to cannabis, to change its drug policy (Lemmens & Garretsen, 1998; Reinerman, 1998). The pressure has been justified on the grounds that the Netherlands policy ‘undermines domestic drug policy’ (in the USA), stimulates across border drug tourism, and undermines international collaborative efforts to reduce drug production and trafficking. It seems clear that any nation adopting a system of cannabis control which is regarded as permissive or threatening by its neighbours or powerful members of the international community will need to have considerable resolve and be clear about the domestic benefits of such a policy to sustain resistance to such pressure. The Netherlands has shown that this is possible.
- The Dutch experience shows that if the control of the wholesale supply of cannabis to retailers is not managed within a legislative or explicit regulatory structure then this causes problems for those trying to run legitimate cannabis supply businesses and makes government taxation of this supply problematic (Silver, 1998, unpublished).

Conceptual or theoretical

- The Dutch approach of formalising inconsistency between the provisions of legislation and its implementation could be seen by some as conveying confusing messages to the community. This argument would suggest that it is preferable for legislation and policy to be aligned so that both would either permit or proscribe the use of cannabis in certain circumstances (McDonald *et al.*, 1994).

Prohibition with civil penalties

Advantages

Evidence based

- There is evidence that those who receive a criminal conviction for a minor cannabis offence can pay a considerable social cost as a result (Erickson, 1980; Erickson & Murray, 1986; LeDain, 1972; Lenton, Bennett & Heale, 1999; Lenton, Christie, Humeniuk, Brooks, Bennett & Heale, 1999. Many believe that this cost may be out of proportion to the seriousness of the offence (Christie, 1991; LeDain, 1972). The adverse social impacts for those apprehended for a minor cannabis offence under an infringement notice system with civil penalties have been shown to be significantly less than those under strict cannabis prohibition with criminal penalties (Lenton, Christie, Humeniuk, *et al.*, 1999).
- Research in the USA (Erickson, 1993; Single, 1989) and Australia (Commonwealth Department of Health and Family Services, 1996; Donnelly, Hall & Christie, 1995, 1999) which has compared prevalence of cannabis use in the general population between states with total prohibition of cannabis and those which have introduced prohibition with civil penalties schemes shows that removal of criminal penalties for minor cannabis offences has not resulted in wider cannabis use.
- The financial costs of police processing and court costs associated with prosecuting minor cannabis offenders under a total prohibition approach are considerable (Alcohol and Drug Council of Australia, 1993; Australian Bureau of Criminal Intelligence, 1998, 1999; Brooks, Stathard, Moss, Christie & Ali, 1999; Criminal Justice Commission, 1994). Introduction of infringement notice schemes for minor cannabis offences has been shown to result in significant cost savings (Aldrich & Mikuriya, 1988; Brooks, Stathard, Moss, Christie & Ali, 1999; Criminal Justice Commission, 1994). The police resources which are freed up through the introduction of an infringement notice approach can be targeted at major drug traffickers and other serious crimes.

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- Australian studies have found there are high levels of public support for a civil penalty approach for minor cannabis offences (Bowman & Sanson-Fisher, 1994; Heale, Hawks & Lenton, 1999; Lenton & Ovenden, 1996)

Conceptual or theoretical

- While research shows that many in the community believe the imposition of criminal sanctions for a minor cannabis offences is out of proportion to the seriousness of the crime (Lenton & Ovenden, 1996) , the civil penalty approach allows for fines to be set at a level commensurate with the offence while maintaining the illegality of the act.
- The use of infringement notices provides an opportunity to present other options such as education, assessment or treatment as part of an expiation system. Formal and informal cautioning schemes can also be integrated within a civil penalties approach.
- The use of civil penalties schemes provides an opportunity to structure the cannabis market so that a greater proportion of the cannabis which is consumed is supplied by small-scale user growers, rather than by large scale commercial suppliers with other criminal associations (Sutton, in press).
- The Australian experience shows that the civil penalties approach is not in contravention of Australia's international treaty obligations.
- Maintaining a legislative prohibition of cannabis use, albeit one with civil penalties, does not equate with 'legalisation' of cannabis. Public attitude surveys in Australia have shown that the vast majority of the public are against making cannabis use legal (Bowman & Sanson-Fisher, 1994; Heale, Hawks & Lenton, 1999; Lenton & Ovenden, 1996). Although the recent data from South Australia would suggest that a comprehensive public education campaign may be needed to clarify the legal status of cannabis use under such a civil penalties system.

Disadvantages

Evidence based

- Research on the South Australian CEN scheme has found evidence of significant net-widening in that since its inception, there has been approximately a three-fold increase in the number of CENs issued (Christie, 1999; Christie & Ali, 1995). This appears to be due to police practices and the administrative ease with which the notices can be issued (Christie & Ali, 1995; Christie, 1999). It is possible that under the SA system, as police do not have discretion as to whether they can issue a CEN, many offences which may have been dealt with by 'informal caution' or a 'warning' under the pre CEN system, now result in an infringement notice being issued. A scheme which allows informal cautions and incorporates formal cautioning may reduce the likelihood of significant net-widening.
- There is evidence from South Australia that those of lower socio-economic status were more likely to be represented among those issued with CENs and those who were prosecuted for failing to pay their fine (Sutton & Sarre, 1992). It has been suggested that this could be improved by measures specified below.
- Only about 45% of CENs issued in South Australia are expiated (Christie, 1999). This could be due to financial hardship, particularly for younger offenders and those who may have received multiple CENs over time. Also, as it may be difficult for police to verify proof of identity at the time a CEN is issued to an offender, some CEN matters are lost to follow-up. The rate of expiation of CEN offences may improve following recent changes including increasing the number of payment options (eg. instalment payments, community service). In addition, the provision of clearer and more detailed information on the consequences of failure to pay expiation fees (especially of criminal conviction) may help to improve expiation rates (Ali, Christie, Lenton, *et al.*, 1999).
- In South Australia the cost to the system of a CEN being issued and cleared increased greatly when the fine was not expiated. It increased just under three-fold when matters remained unpaid and had to be prosecuted, more than eight-fold when cleared by community service order, and more than eighteen-fold when cleared by imprisonment (Brooks, Stathard, Moss, *et al.*, 1999). Improvements in cost savings as a result of introducing prohibition with civil penalties can be made if the rate of expiations is kept high by strategies such as those discussed above (Ali, Christie, Lenton, *et al.*, 1999).

- Senior police in South Australia believed there was opportunity for the 10 plant limit to be exploited by commercial cannabis cultivation enterprises spreading their operations across smaller plantations of 10 plants or fewer, while maximising the yields through sophisticated cultivation techniques (Sutton & McMillan, 1999). As a result the maximum number of plants expiable under the CEN scheme has recently been reduced from ten to three. However, alternative strategies such as police repeatedly issue CENs and seizing plants and growing equipment could also be used to dissuade such operations (Sutton & McMillan, 1999).

Conceptual or theoretical

- It has been noted that the expiation notice system may put pressure on some offenders who claim to be not guilty, to pay the fine, thus accepting guilt, rather than contest the charge and run the risk of appearing in court acquiring associated costs, and potentially receiving a criminal conviction if found guilty. One solution noted in McDonald *et al.* (1994) is for the law to be amended so that no conviction is recorded if the person contesting the CEN is found guilty, however, this has not been done.

Identification of a recommended model for the regulation of cannabis possession, use and supply in Victoria

The approach we shall adopt in this section, having already reviewed the literature, rationale and evidence relating to the several legislative options, is to consider what that evidence suggests are the principles underlying a preferred option.

Principles underlying the recommended model

In this Section we offer, on the basis of our review of the relevant research literature and conceptual argument, the underlying principles upon which we believe a preferred option should rest.

1. The recognition that, in general terms, drugs differ in their capacity to harm.

While it is not possible to exactly arrange drugs along a quantitative spectrum of harm, it is none-the-less possible to group drugs according to their approximate

capacity to do harm to the user. Systems designed to regulate drug use should reflect this and apply penalties accordingly. There needs to be some logical and defensible relationship between the harm associated with a particular drug and the penalties applied to its use. While cannabis is not a harm free drug, it is much less harmful than many other currently illicit drugs, and indeed some which are licit.

At the simplest level, a distinction can be made between harm which is primarily borne by the individual user and harm which is primarily borne by society. In reality, even this distinction is difficult to sustain as an absolute in a society in which the cost of individual self harm is shared amongst the citizens whose taxes support the general health and welfare system. However, it is nonetheless a useful distinction when discussing the appropriateness of penalties designed to modify personal drug use and its associated harms. In this connection it would appear valid to argue that where the major costs of an individual's drug use are borne by themselves (eg. health costs, dependency) then the penalties should be less than when the costs of their use can have a large and profound effect on the well being of others (eg. driving a vehicle under while grossly impaired by cannabis). It is also important to note that in addition to the harms that users can experience as a direct result of their drug use, there are also a range of harms experienced by users as a result of the application of regulatory and legal systems designed to control their use.

2. The preferred option should not impose a life-long penalty for a simple offence of personal use.

This requirement is a variant of the view that the penalty 'should fit the crime'. Someone found to be using cannabis should not have a life-long penalty imposed on them, for example, a criminal record, with no possibility of that penalty being expunged whatever their subsequent drug use. However, while the occasional personal use of cannabis may be judged a minor threat on the spectrum of harm, its combination with alcohol and driving, or its use when operating machinery are properly regarded as endangering others and therefore deserving of more severe penalties than is use per se.

3. A legislative system should not encourage cannabis use or patterns of use that increase harm.

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While the deterrent impact of legislative systems are difficult to demonstrate, penalties should certainly be structured so that they do not actually encourage use or patterns of use which may increase harm. The argument as to whether systems can be shown to deter use is complex.

Obviously for those who use cannabis the prospect of a penalty has not, by definition, stopped them from using, although it might have affected the way they use. On the other hand, for some of those not using cannabis, the penalty may have had a deterrent effect. Research on the prevalence of cannabis use in the general community suggests, however, that the removal of criminal penalties for cannabis use has not affected the proportion of the general community who have recently used the drug.

Whatever deterrent effect a legislative system may or may not have had in a particular case, it should not serve to encourage use in the sense of leading to more widespread use, more intensive use, more harmful use, or lead to use of other, more harmful drugs.

4. The option should facilitate, rather than hinder, preventative education and treatment.

A legislative option which serves to curtail discussion of any aspect of the use other than its illegality denies users the opportunity to render their use safer with obvious benefits not only to themselves, but society in general. Having the means and knowledge necessary to reduce the likelihood of harm should not be denied, whatever the illegality of that use. While in law there are no barriers to discussing strategies to reduce harm under prohibitionist models, in some places, particularly for example in schools, it is seen as inconsistent by some administrators and parents groups to be discussing safer ways of using drugs, the use of which is deemed to be unlawful.

The right to receive treatment for one's drug-related problems should not be compromised by the criminal penalties which apply to drug use. The preferred option should not discourage users from seeking treatment for fear that in doing so they will be criminally prosecuted for their use.

5. Any legislative option which does not criminalise personal use should make realistic provision for the non-criminal supply of the drug for that (personal) use.

In so far as it has been shown that the so called 'gateway hypothesis' can in part be explained by the fact that cannabis users come in contact with other drugs when they purchase cannabis from illicit suppliers who are also dealing in other more dangerous

drugs, it is clearly desirable that any option seeks, as far as is practicable, to separate the supply of cannabis from the supply of these other, more harmful drugs.

However, it is not enough for a legislative system which does not criminalise personal use of cannabis to assume demand can be met entirely by users growing their own cannabis. The system should be flexible enough not to criminalise low-level supply which is necessitated for any model other than *free availability* or *government regulation* to work in practice.

The preferred option should accordingly favour small scale production over large scale commercial production which may be used to fund other illegal activity or which itself is supported by other illegal activity. On the other hand, small scale production primarily by users, if not only for personal use and cost recovery, should not result in large scale profiteering.

6. The preferred option should not operate in practice in a way which can be shown to be discriminatory.

A system of fines, even one which allows the expiation of the offence should the fine be paid, discriminates against those that can not pay the fine and who may subsequently be convicted of fine default. Provision needs to be made in any system for a penalty applied to illegal use to be ‘worked off’ in a variety of ways which are considered equitable, but which do not discriminate against particular categories of offenders, for example attending a cannabis education session for those who may be unable to pay a fine.

7. The preferred option should be compatible with a generally accepted interpretation of Australia’s obligations under the various international drug treaties.

It does not appear to us to be practical to recommend an option which is in breach of generally accepted interpretations of the international treaties. While the review of the treaties and the situation in other countries has shown that it may be possible to have a de facto system of regulation, such as that which exists in the Netherlands, whereby laws criminalising cannabis are retained but not enforced, it is clear that there must be a considerable amount of political will to support such a system in the face of pressure from within and without. Unless there is a recognised level of political and public

support for the view that domestic drug policy should not be dictated by international treaties obligations, any proposed model should clearly be compatible with international treaty obligations. The *partial prohibition* approach which does not treat possession of a personal use amount as an offence does not meet this criterion. However, the *prohibition with civil penalties* approach, which to date applies in three Australian states and territories, has been shown to be consistent with the international treaties.

8. *The preferred option, whether applied nationally, regionally or on a state-wide basis, should not act as a 'honey-pot' to the extent that it makes the system unworkable.*

Whether enacted on a national or regional basis, it is imperative that the preferred option not be compromised by attracting large numbers of non-resident users to that jurisdiction. The provision of more appropriate legislative controls, more accessible treatment options, and other desirable features of the preferred system may be jeopardised should that system encourage an influx of non-resident users and as a result lose the support of the general public.

9. *The preferred option will need to be viewed as justifiable, workable and coherent.*

While the preferred option should ideally be judged by all segments of society to be justifiable, workable and coherent, it is particularly important that it is supported by the bulk of the police forces appointed to enforce the system, the judiciary appointed to arbitrate it and the users who will be dealt with by it. The preferred model should incorporate adequate education about the laws, their intention and detail for all these groups. This should include education of the general public.

Of particular importance is the perceived coherence of the system. It should be seen in its *totality* as consistent in seeking certain objectives. It needs to be a system which educators can confidently espouse and which will be perceived as logical by users even if they contest the continuing illegality of use.

For the system to be workable it will require that the numbers dealt with do not overwhelm the system. Appropriate provisions should be built into it allowing less

serious offences to be dealt with expeditiously. Opportunities should also exist for diversion from the court process when this is appropriate.

- 10. Whatever the behaviours that the preferred option aims to deter, there should be a perceived high probability of their detection.*

The principle being espoused here is the same as that which underlines random breath testing for alcohol. For drivers to be deterred from drinking when proposing to drive, they must *expect* to be apprehended. All the evidence suggests that it is the perceived *probability* of being apprehended, not the *penalty* applied which acts as a deterrent. Evidence suggests that the risk of being apprehended for possession/use of cannabis is extremely low, particularly when the drug is being used in private. If, for example, smoking cannabis in the street was deemed a behaviour which ought to be discouraged, its visibility would render apprehension possible and therefore a law which prohibited smoking cannabis in the street could conceivably provide reasonable deterrence for that behaviour.

- 11. The preferred option should be capable of being evaluated and subject to regular review and adjustment to increase the likelihood that it meets the goals which it was designed to achieve.*

The only meaningful test for any legislative system is how it works in practice in the setting in which it is applied. Therefore we believe that the preferred legislative option should be subject to a comprehensive independent evaluation designed prior to the legislative changes being implemented and commenced from their inception.

The recommended model

As part of the process of developing the model, legal opinion was obtained from two senior members of the legal profession (See Appendix 3) on the underlying principles (see pages 193 to 198), the recommended model and the explanatory notes (see pages 205 to 211). In Appendix 8 the model is presented interleaved with the appropriate sections of the explanatory notes.

Opinion was obtained regarding:

- An overall opinion on the workability of the proposed model from a legal point of view
- The fit of the proposed model with current legislation
- Suggestions as to how the description of the model could be improved.
- Whether the two tiered structure of penalties is too complex
- Whether the use of the 'OR' / 'OR BOTH' convention would frustrate the aims of the model
- The feasibility of a definition of a *small quantity* based on the number of cannabis plants which contain 'heads'.
- Whether changes in the headed status of plants as they grow may cause problems in enforcement.
- The adoption of the burden of proof clauses applied in the Model Criminal Code – Drugs (Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, 1998).
- Any other comments or suggestions.

This opinion was considered in the preparation of the final version of the model offered below. However, no way should the lawyers be held responsible for the recommended model or other material contained in this discussion document.

Having identified what we consider the evidence suggests are the elements of a preferred legislative option, we will now attempt to offer our preferred model. In doing so, we have proposed a model which is a variant of the *prohibition with civil penalties* approach as described (see pages 72 to 75). The model is a variant in that it incorporates cautioning for first offenders, and because it aims to separate cannabis from other illicit drug markets by treating provision, as well as possession, of a *small quantity* of cannabis as expiable civil offences, rather than as criminal offences.

It is proposed that the cautioning and expiation provisions suggested below would apply to the offences of *possess cannabis*, *cultivate cannabis*, and *traffic cannabis* specified in the *Drugs, Poisons and Controlled Substances Act of 1981*. We recommend that the offence of *use cannabis* specified in the Act is abolished as the offences based on possession of a quantity of cannabis are more objective and, in the vast majority of situations, make charges based on use per se unnecessary.

1. The option would provide for cautioning for first offenders.

First offenders found in possession of an amount deemed to be *a small quantity* of cannabis would be issued with a formal caution. The cautioning notice would include information about the harms associated with cannabis, the legal provisions which apply to the drug and information about treatment services for people with cannabis related problems. Those cautioned will be told that the caution will be recorded and subsequent offences will result in a fine being imposed. At their discretion police will be able to informally warn first offenders rather than issue a formal caution.

A small quantity would be defined as not more than:

- 10 growing plants of which not more than 3 plants shall be mature (possess flowering heads or be more than 50 cm in height)

OR

- 50 grams when dried of harvested flowering heads. Where cannabis resin is possessed, 1 gram of resin will be deemed equivalent to 5 grams of dried flowering heads. The total amount of resin, and harvested cannabis flowering heads when dried, shall be not more than 50 grams

OR BOTH.

Height should be measured vertically from the point at which the plant stem emerges from the levelled ground, or growing medium in the case of hydroponics, to the top of the tallest stem.

2. There will be an opportunity to expiate subsequent offences of possession of a small quantity of cannabis.

Subsequent apprehensions (that is second or subsequent offences) would result in an infringement notice being issued. The infringement notice would include information about the harms associated with cannabis, the legal provisions which apply to the drug and information about treatment services for people with cannabis related problems. Repeat offenders under the infringement notice system would not have their penalties increase with each offence. Care, however, would be taken to ensure that all such penalties were discharged.

There will be two tiers of infringement notices with accompanying penalties for possession of a small quantity of cannabis. The recommended tiers are:

Tier 1: CANNABIS POSSESSION INFRINGEMENT NOTICE

\$50 for possession of not more than:

- 10 growing plants of which not more than 3 plants shall be mature (possess flowering heads or be more than 50 cm in height)

OR

- 25 grams when dried of harvested flowering heads. Where cannabis resin is possessed, 1 gram of resin will be deemed equivalent to 5 grams of dried flowering heads. The total amount of resin, and harvested cannabis flowering heads when dried, shall be not more than 25 grams

OR BOTH.

Tier 2: CANNABIS POSSESSION INFRINGEMENT NOTICE

\$150 for possession of not more than:

- 10 growing plants of which not more than 3 plants shall be mature (possess flowering heads or be more than 50 cm in height)

OR

- 50 grams when dried of harvested flowering heads. Where cannabis resin is possessed, 1 gram of resin will be deemed equivalent to 5 grams of dried flowering heads. The total amount of resin, and harvested cannabis flowering heads when dried, shall be not more than 50 grams.

OR BOTH.

Possession of an amount of cannabis greater than *a small quantity* but less than *a trafficable quantity* will be dealt with as a non-expiable cannabis possession offence and subject to the criminal penalties specified in the *Drugs Poisons and Controlled Substances Act 1981*.

3. *The means of expiation would be able to be varied.*

In order that legislation regarding possession of *a small quantity* of cannabis not discriminate against those with limited income, the infringement notice would be able to be dispensed within a specified period (28 days) by either: (1) Payment of the fine;

(2) Attending a specified cannabis education session. Those unable to pay the fine within the 28 day period may, prior to the end of this period, arrange to pay their fine by instalments over a number of months.

4. *The provision of a small quantity of cannabis by an adult to a person of 17 years of age or more will not be regarded as a supply (trafficking) offence.*

Thus, if person A provides a *small quantity* of cannabis to person B, whether gratis or for profit, then this transaction will not be deemed a supply (trafficking) offence. Provision of greater than a *small quantity* of cannabis from one adult to a person of not less than 17 years of age will be deemed a supply (trafficking) offence.

Provision of any amount of cannabis by an adult to a person of less than 17 years of age will be deemed a cannabis supply (trafficking) offence. The onus of proof will be on the defendant to show that they were unaware that the person was under the age of 17 years.

5. *A trafficable quantity of cannabis will be defined as possession of more than 10 plants or greater than 250 grams of cannabis flowering heads when dried.*

Most legislative systems specify a *trafficable quantity* of a drug which provides grounds for an inference that the accused meant to traffic in the drug. This amount is usually set at a level which far exceeds that for personal use of the drug. For the purpose of the proposed model a trafficable quantity of cannabis will be defined as:

- More than 10 plants of any height

OR

- the weight of harvested flowering heads when dried shall be greater than 250 grams. Where cannabis resin is possessed, 1 gram of resin will be deemed equivalent to 5 grams of dried flowering heads. Thus the total amount of resin, and cannabis flowering heads when dried, shall be more than 250 grams.

On proof of possession of a trafficable quantity of cannabis, the prosecution should bear the legal burden of proving an intention to traffic, and the onus should be on the accused person to bring forward evidence that there was no intention to traffic.

6. *Failure to dispense with the infringement notice will not result in automatic*

conviction on the cannabis charge.

Failure to dispense with the infringement notice by the options outlined in 3 above would result in the offender being dealt with as someone with a financial debt to the state, and at the discretion of police or prosecutor, *may* forfeit assets, negotiate to pay their fine in instalments, or be prosecuted for the underlying cannabis offence.

7. *Persons under the age of 17 years would be dealt with under existing juvenile provisions.*

All persons under the age of 17 years found in personal possession of cannabis or charged with cannabis trafficking would be dealt with under the juvenile court/children's panel system which would have wide ranging discretion as to how it dealt with such offenders.

8. *Records of non-supply offences will be automatically expunged after 2 years.*

All record of formal cautionings, infringement notices and criminal convictions involving personal possession (but not supply offences as outlined in 2 above) should be automatically expunged after a two year period during which no other drug-related offence is recorded. Expungement should also occur of any record on any centrally held data base such as the National Names Index (NNI) and the National Exchange of Police Information (NEPI) system maintained on behalf of the Commonwealth and state and territory police forces.

9. *Possession of equipment for the preparation and consumption of cannabis products should continue NOT to be an offence under Victorian law.*

10. *Penalties for driving while impaired by cannabis should be commensurate with those for driving under the influence of alcohol.*

Should a suitable roadside measure for cannabis impaired driving be developed then penalties equivalent to those for driving under the influence of alcohol should apply with similar provision for these penalties to escalate for subsequent such offences.

Goals and evaluation criteria for the recommended model

An evaluation of the preferred model would need to address the extent to which it at least met the following goals:

1. Reduce the harms resulting from cannabis use itself by:
 - Not increasing the prevalence of regular use in comparison with that for other Australian jurisdictions
 - Removing legal barriers to help seeking for those with cannabis related problems
 - (Possibly) providing a source of funds which could be diverted to fund cannabis-related treatment.
2. Reduce the adverse social costs to individuals of being apprehended for a minor cannabis offence by:
 - Providing cautioning for first offenders
 - Providing infringement notices with a scale of penalties according to amount and non-criminal sanctions for subsequent offences
 - Providing a range of options for dispensing with notices to reduce the likelihood that those who are on lower incomes fail to expiate and face more severe penalties
 - Ensuring that failure to expiate does not result in automatic conviction for the cannabis offence
 - Requiring mandatory expungement of offences after two years non offending
 - Providing education regarding the harmful aspects of use.
3. Reduce the adverse costs to society as a whole from the enforcement of the criminal law against minor cannabis offenders by:
 - Reducing the amount of police, court and corrective services resources devoted to enforcing minor cannabis offences.
4. Reduce the proportion of the total amount of cannabis consumed which is supplied by larger more commercial sources compared to that which is grown by the user or other low-level user/suppliers by:
 - Classifying cultivation, possession and/or provision of a *small quantity* of

cannabis as expiable civil offences rather than criminal offences.

5. Increase the public's understanding of the laws which apply to cannabis by:

- Undertaking a public education campaign on the laws applying to cannabis.

Explanatory notes for the recommended model

1. The option would provide for cautioning of first offenders.

We have retained a formal caution for first offenders for a number of reasons. Firstly, since September 1998 cautions already apply to the first two offences of possession/use cannabis under the 50 gram limit. Given that, based on available data, almost half of cannabis offenders are likely to be first offenders (Lenton, Ferrante & Loh, 1996), maintaining a discretionary caution for the first offence is likely to result in a reduction in adverse social consequences for a large number of offenders.

Secondly, the caution provides an opportunity for a positive interaction between the police officer and the offender and provides a context for an instructive warning to be issued. This also allowed the offenders attention to be directed to information about potential harms associated with cannabis, the laws which apply to it and information on treatment options for those with problems.

While there may be some potential harms due to a record being made in the police system that a caution has been issued, we believe that the benefits of including a caution for a first offence outweigh these risks. In our consultations about the preferred model, concerns were expressed about cautions being recorded and the consequences of this, and the suggestion was made that there may be less unintended consequences for the offender if there was not a formal caution, but rather an infringement notice for a first offence. Maintaining any system that includes increases in penalties for subsequent offences, including from caution for first offence to infringement notice for second and subsequent offences, necessitates records being kept of these relatively minor offences. With this comes the risk that any record, once in the police system, may lead to the offender receiving further attention from the police in future and a snowballing involvement with the criminal justice system, particularly as computerised data storage and retrieval systems become increasingly more efficient. On the other hand, records are already maintained of these offences within the police system. Furthermore, under the preferred model, the consequences of a subsequent offence within the expiable amount will result in a fine rather than the

significantly harsher criminal conviction and accompanying criminal record. As police record systems across the board are likely to become even more powerful in terms of storage, retrieval and useability, the issue of how the information is used, and by whom, will need to be addressed. We have thus concluded that the potential benefits of including a caution for first offenders should outweigh the possible risks resulting from the necessary record of the caution being made.

While possession levels for personal use is an issue both here and in subsequent sections, it will be addressed here. It is not possible to absolutely accurately establish equivalents across plants, wet cannabis, dried cannabis and hashish (cannabis resin). What we have proposed is an attempt to specify cut-off points for small quantities for personal use and trafficable amounts which provide reasonable yardsticks for those engaged in the practice of law enforcement as well as those growing, or using cannabis.

The limit of 10 plants in total (including seedlings and juveniles), with not more than three mature plants (over 50 cms in height, or containing flowering heads) is designed to provide enforceable levels for police while allowing the grower to have a reasonable number of juvenile plants for crop selection and sexing while also acknowledging that some plants will not survive due to the vagaries of growing conditions. De Launey (1996) in her study of commercial cannabis crop growers in northern NSW concluded that on average a mature plant yielded 4 oz (about 200g) of heads per plant, but there was great variability in yield depending on a number of factors including the growing conditions and experience of the grower. Additionally, her work and that of Lenton, Bennett and Heale (1999) suggests that only the heads and tips of female plants have any real value in the cannabis market. The height limit has most relevance for plants grown outside which informal consultation with growers and users has indicated can generally be taller than those grown indoors using hydroponic equipment. While it is not possible to definitively provide a height-based cut-off point for culling, sexing and so on, the somewhat arbitrary limit of 50 cm does seem to allow reasonable flexibility for the grower/user while providing law enforcement officers with an objective threshold. The guidance regarding the method of measuring the height, specified in the definition of a *small quantity*, should further clarify any ambiguities here. The limit of three plants in head prevents growing more than 3 plants under 50 cm of the shorter varieties, favoured by many indoor

hydroponic growers, which could otherwise all be in head and therefore contain considerable amounts of heads.

The 50 gram limit of cannabis plant material defined as a *small quantity* currently applies under the Victorian *Drugs Poisons and Controlled Substances Act 1981* and is the maximum amount eligible for cautioning under the Victorian cannabis cautioning scheme. However, some of the cannabis material such as juvenile plants in the ground, dried leaves and stalks have negligible THC content and are of little, if any use for the cannabis user, or value in the cannabis market. Given this, we have chosen to apply the possession limits to those cannabis products which are useable as a drug, that is the harvested flowering head and tips of the female plant (heads), and cannabis resin (hashish). We have decided to exclude the weight of cannabis heads which remain on the growing plants from the calculation of total dried head equivalents. Thus it is possible for the person to have more than 50 grams of cannabis heads if that cannabis is still growing on a live plant. Possession of not more than 50 grams, when dried, of harvested cannabis as well as not more than ten live cannabis plants, of which not more than three can be in head and not more than three can be more than 50 cm tall, is also classed as a *small quantity* and is eligible for caution and expiation. This was done to keep the system as administratively simple as possible and reinforce self-supply of the drug.

We have presented a method for aggregating all these substances to calculate a total weight defining a *small quantity* expressed in terms of gram equivalents of dried cannabis heads. As many Australian jurisdictions have set limits for possession of cannabis resin which are one fifth that for cannabis plant material we have adopted the same ratio in adopting weight equivalents. Thus one gram of cannabis resin is assumed to be equivalent to five grams of dried cannabis heads. Cannabis heads recently harvested must be dried and weighed. While this may at first seem cumbersome, in drug law enforcement the specific amount and composition of a seized powder can often only be determined once the material has been weighed and subjected to testing to verify its composition.

We believe that the method offered provides a workable way of taking into account possession of multiple cannabis substances.

2. There will be an opportunity to expiate subsequent offences of possession of cannabis for personal use.

We have chosen to apply a two tier penalty system for expiable offences with accompanying scales of offences. The tiers are set according to the amount of cannabis, rather than the number of cannabis plants, in the person's possession as it is the dried cannabis which is used. The reason for the tiered scales of infringement is to reinforce the possession of smaller, rather than larger amounts of the drug. Furthermore, research on the South Australian expiation notice system suggests that one of the reasons for non-payment of fines is that those who are least able to pay, because they are unwaged or on benefits, may be more likely to incur an infringement and may be most disadvantaged by a sizeable financial penalty. We believe that the smaller penalty of \$50 for the smallest possession offence may increase the proportion of expiations and reduce costs to the system by fine defaults or by offenders choosing other options for dispensing with infringement notices (see point 3 below) which may be more costly to administer.

3. The means of expiation would be able to be varied.

Offenders are given choices as to how they clear their fine within the 28 day period available for expiation. We believe that any second or subsequent offence should be able to be cleared according to the full range of options unless, for example, the person has been shown to have defaulted using this method previously.

4. The provision of a small quantity of cannabis by an adult to a person of 17 years of age or more will not be regarded as a supply (trafficking) offence.

While it may be legislatively expedient to assume that all cannabis users will grow their own cannabis in practice this is unlikely to be the case. In the real world there will at least be some low level provision of cannabis. The Model Criminal Code points out that:

The overwhelming majority of offenders who appear before the courts on a charge of trafficking arising from possession are not caught with kilo quantities...An unjustified conviction for dealing will often impose social and individual harms which far exceed the harms associated with the use of the drug in question (Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, 1998, p.87).

It has been argued that the preferred system should be flexible enough not to criminalise low-level supply. We believe that the limits prescribed in Tiers 1 and 2, together with this clause, provide adequate flexibility to encompass this.

We note also that police and prosecutors have it in their discretion to continue issuing infringement notices and confiscating the cannabis material of persons who they believe are trying to subvert the intention of the law (by, for example, co-operating with other growers in an organised collective to supply the market). They also have the option of applying criminal sanctions to those who refuse to dispense with their infringement notice by one of the means outlined in 3 above.

The application of criminal sanctions to any level of supply by an adult to a person under the age of 17 years is on face value a straight forward matter. However, it has been noted that this could mean that someone at a party who passes a cannabis cigarette to another person who is in reality under 17 but does not appear so would be committing a trafficking offence with potentially serious consequences. We believe allowing the accused person the capacity to make a case that they were unaware that the person was a juvenile adequately responds to this concern.

5. *A trafficable quantity of cannabis will be defined as possession of more than 10 plants or greater than 250 grams of cannabis flowering heads when dried.*

The Model Criminal Code (Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, 1998) points out that in most jurisdictions, the possession of a quantity of a prohibited drug which legislatures have declared to be 'trafficable', provides grounds for an inference that the accused meant to traffic in the drug. In these jurisdictions the trafficable quantities specified in legislation are intended to represent quantities which so greatly exceed the amounts for personal possession that it is extremely unlikely that a person who has that amount in their possession has that amount for their personal use. Whilst we have done this with regards to the amount of harvested cannabis heads the person has in their possession, we have specified the trafficable quantity of plants at more than 10 in order to clearly limit the number of plants which are grown. We agree with the recommendations of the model code that on proof of possession of a trafficable quantity of cannabis, the prosecution should bear the legal burden of proving an intention to traffic, and the

onus should be on the accused person to bring forward evidence that there was no intention to traffic.

6. Failure to dispense with the infringement notice will not result in automatic conviction on the cannabis charge.

The South Australian CEN system has been criticised because a person who fails to pay the prescribed penalty within the time period is almost always automatically charged with the underlying minor cannabis offence and will almost certainly be convicted of it. As a result substantial numbers of people receive criminal convictions for minor cannabis offences. In the preferred model we have adopted aspects of the systems in the ACT and the NT which also employ infringement notice systems by allowing an offender to be dealt with as a fine defaulter who has a financial debt to the state, and at the discretion of police or prosecutor, *may* forfeit assets, or be prosecuted for the underlying cannabis offence. We have also added the option for defaulters to pay their fine in instalments through arrangements with a debt collection agency, which is a suggestion being considered in improving the SA system. Combined with the two tier expiation notice system this clause should reduce the likelihood of net-widening due to failure to expiate.

7. Persons under the age of 17 years would be dealt with under existing juvenile provisions.

No additional comments.

8. Records of non-supply offences will be automatically expunged after 2 years.

We are aware that ‘expungement’ is never total and absolute. Clearly it is most preferable that no criminal record is incurred in relation to these offences. We would thus recommend that in addition to automatic expungement after 2 years that cautions or infringement notices are treated as misdemeanours and do not appear in criminal record checks for employment or travel visa purposes and are not recorded on national crime data bases such as NEPI and the NNI.

9. *Possession of equipment for the preparation and consumption of cannabis products should continue NOT to be an offence under Victorian law.*

No additional comments.

10. *Penalties for driving while impaired by cannabis should be commensurate with those for driving under the influence of alcohol.*

While the evidence for low levels of cannabis impairing driving ability are questionable at best, it is clear that someone who is very intoxicated with cannabis may be impaired in their capacity to drive. We believe that where cannabis related impairment can be demonstrated penalties should be commensurate to those for driving under the influence of alcohol.

The effects that the recommended model might have on drug-related harms and relevant services in Victoria and their evaluation

It is not possible to precisely predict the impact of the recommended model on cannabis– related harms in Victoria. However, it is possible to extrapolate from the evidence and argument presented previously in order to make some statements about the likely effect the recommended model might have on a number of domains. If the model is implemented, it will be essential to carefully evaluate the extent to which the changes have intended and unintended consequences. Goals against which the model should be evaluated have already been specified (see pages 203 to 204), and an evaluation will inform any required changes to the model.

Likely impacts on rates of cannabis use in Victoria

Implementation of the recommended model is unlikely to itself result in an increase in rates of cannabis use in Victoria compared to other States. Other things being equal, it is likely that rates of lifetime cannabis use across the country will continue to gradually increase independent of the legal frameworks in place in the various States and Territories. Such an increase will occur as the proportion of the population born after the 1950s continues to increase with each birth cohort. Research evidence on the impacts of the Cannabis Expiation Notice (CEN) System in South Australia (Donnelly, Hall & Christie, 1999), suggests that implementing the recommended model, which is another example of a *prohibition with civil penalties* approach, should

not result in increasing rates of recent (last month or last year) cannabis use in the Victorian community. It is possible that there may be a temporary increase in the proportion of the population who have ‘ever’ used the drug, which appears to have occurred with the introduction of the CEN system in South Australia (Ali, Christie, Lenton, *et al.*, 1999; Donnelly, Hall & Christie, 1999). However, this may be less likely because of the higher rates of ever having tried the drug in Australia at the end of the 90s compared to the end of the 80s when the CEN system was introduced.

It is not expected that the introduction of the model will result in a significant increase in cannabis use among young people in particular. Analysis of National Household Survey data (Donnelly, Hall & Christie, 1999) suggests that there had been an Australia-wide increase in the rates of lifetime cannabis use among those aged 14 to 29 years. Again, evaluation of the CEN scheme (Donnelly, Hall & Christie, 1999; Donnelly, Oldenburg, Quine, *et al.*, 1992; Neill, Christie & Cormack, 1991), found that introduction of a civil penalties scheme did not in itself appear to have increased cannabis use by secondary school students. As part of the evaluation of the implementation of the recommended model for Victoria, comparisons should be made of the results of surveys of school students in Victoria and other States and Territories. Issues of interest could include the rates of lifetime and recent cannabis use, frequency of use, willingness to use cannabis, knowledge about harms associated with cannabis, knowledge of the laws which apply to cannabis, and knowledge of strategies to reduce the harm associated with cannabis use (although this may not be routinely included in such surveys, and may need to be addressed through supplementary data collection). It may be possible to provide funds to organisations already conducting such surveys, such as The Centre for Behavioural Research, Anti-Cancer Council of Victoria, to add to their item pool and/or increase the sample size to answer specific evaluation questions.

Likely impacts on rates of other drug use in Victoria

The introduction of the proposed model should not result in increased rates of use of drugs other than cannabis in Victoria, compared to the other States and Territories. Evidence reviewed elsewhere in this document on the so-called ‘gateway’ theories, and data from the Netherlands (Cohen & Sas, 1998), does not suggest that removing criminal penalties for minor cannabis offences will result in increases in population

prevalence of the use of other illicit drugs. However, because of the low rates of use of other illicit drugs found in population surveys, impacts on other drug use may be difficult to measure. This may be improved by comparing the rates of use among 24 to 29 year old respondents in the National Household Survey, who have higher rates of other drug use, and where any likely changes in use may be found. Research in the United States on the impact of changes in cannabis law on accident and emergency presentations (Model, 1993), suggests that there may be decreases in presentations for drugs other than cannabis, as some people who use illicit drugs may choose to stay with cannabis, rather than use other, potentially more harmful substances.

Likely impacts on health-related harms associated with cannabis

Clearly, cannabis has the capacity to harm those who use it (see pages 26 to 36) although the most probable public health risks of cannabis use itself are likely to be small to moderate in size because of the relatively small proportion of the population who are heavy users (Hall, 1995a). Given that the evidence suggests overall rates of use in the population are unlikely to be significantly increased by the introduction of the recommended model in Victoria, the question remains as to whether or not the number of heavy users will be significantly increased. While there are limited data on which to make predictions, it is unlikely that the model would greatly increase the number of heavy users. A study of drug users in Victoria suggests that under the existing legislative framework, high potency cannabis is readily available, as it is elsewhere in Australia (Rumbold & Fry, 1998). Examination of trends over time in the IDRS data, as well as rates of use among 24 to 29 year old respondents in the National Household Survey, should indicate whether the number of heavy users increases.

Likely impacts on social harms associated with cannabis conviction

Impacts on the social harms associated with a cannabis conviction are likely to be reduced. Under the current cannabis cautioning system offenders receive a criminal conviction after their second caution. While evaluation of the cannabis cautioning system is at this stage preliminary, there is some suggestion that receiving a caution may increase the likelihood of further involvement with the criminal justice system (see pages 114 to 115) and perhaps result in a criminal conviction for a minor

cannabis offence. Under the proposed model non-criminal infringement notices will be issued for second and subsequent offences thus removing the possibility of criminal conviction for a minor cannabis offence. It has been shown that a criminal conviction for a minor cannabis offence can have a significant adverse social impact on those so convicted in terms of employment, further problems with the law, and problems in relationships and accommodation (Lenton, Bennett & Heale, 1999; Lenton, Christie, Humeniuk, *et al.*, 1999).

Likely impacts on treatment seeking

At present, approximately 11% of persons registering for drug treatment in Victoria nominate cannabis as their primary drug problem (DHS, 1997). This may increase as a result of implementing the recommended model. However, if it does happen, this is unlikely to be because of an increase in the number of people who are using the drug, but rather because of an increased understanding of cannabis-related harms as a result of community education campaigns. Such campaigns may overcome the reluctance to seek help for cannabis-related problems due to stigma about attending drug treatment services or concern about discussing what is defined by law as criminal behaviour. Changes in trends in treatment seeking for cannabis problems should continue to be monitored through client-related calls to Directline (eg. Lanagan, 1997) and treatment presentations recorded on the Alcohol and Drug Information System (DHS, 1997).

As a result of likely increases in demand for treatment, services for people with cannabis-dependence and other related problems should be further developed. Existing cannabis treatment in Victoria is rightly based on behaviour change principles such as motivational interviewing (Miller & Rollnick, 1991), relapse prevention (Marlatt & Gordon, 1985), controlled use (Mattick & Jarvis, 1993), and both residential and outpatient withdrawal for a minority of severely dependent users. Hall & Solowij (1998) have suggested that an appropriate component of a treatment intervention is the provision of advice to clients seeking help with their cannabis use. Such advice should include information on: the respiratory risks of long-term cannabis smoking; the increased risk of dependence for daily users; the possibility of subtle cognitive impairment if they use regularly over several years; and risks associated with driving, particularly when intoxicated by both alcohol and cannabis. Health service patients with a personal or family history of psychosis should be

advised to stop cannabis use, or substantially reduce it if abstinence is not possible (Hall, 1998). New treatment protocols for cannabis are currently being developed in Victoria by The Turning Point Alcohol & Drug Centre Inc. and in WA by Next Step Specialist Alcohol and Drug Services (formerly the WA Alcohol and Drug Authority). The WA Health Department in conjunction with the WA Drug Abuse Strategy Office (WADASO) have been conducting a cannabis education campaign targeted at the general public, and WADASO is currently piloting cannabis education sessions, run through community drug service teams. Although these two latter initiatives primarily have an abstinence orientation, they could be adapted for use within a harm reduction approach.

Likely impacts on law enforcement

If the recommended model is adopted, its success will depend in a large part on the way it is enforced by police, who since the commencement of this project, have implemented a cannabis cautioning scheme Statewide. The recommended model offers further opportunities for releasing police resources as it encourages a continued use of informal warnings, and second and subsequent offences are dealt with by way of the administratively simple infringement notice, rather than the formal charge process which has been shown to be far more costly in terms of police resources (Brooks, Stathard, Moss *et al.*, 1999; Criminal Justice Commission, 1994).

The possibility of net-widening, which has been a problem in South Australia (Christie & Ali, 1995), is diminished under the recommended model. Net-widening occurs as more people are caught up in the legal system, apparently as a result of the procedural ease of issuing notices. The cautioning provisions, both formal and informal, as well as the two-tiered expiation notice system and the variety of options for clearing notices, should reduce the likelihood of net-widening. The model also provides a workable mechanism for police to enforce the law, consistent with a harm reduction approach and the recommendations of Sutton and James (1996). It will allow for the shaping of the cannabis market so that a greater proportion of the cannabis which is consumed is supplied by small-scale user growers, rather than by large scale commercial suppliers with criminal associations. In this way it may be used to separate the cannabis market from that for other potentially more dangerous drugs. Implementation of the model will need to be accompanied by comprehensive

police training on the issues including: the harm reduction approach, the goals of the legal changes, the detail of the legislation, changes to police procedures and protocols, the use of the system to reduce the likelihood of net-widening, and the rationale for shifting the cannabis market away from criminal elements towards small time user/growers. Police data will need to be used to confirm that net-widening has not occurred. Surveys of users such as the IDRS (Rumbold & Fry, 1998) and data collated from the Australian Bureau of Criminal Intelligence should provide indicators of the shape of the cannabis market and any trends over time.

The recommended model is likely to further reduce the impact on the courts and other components of the criminal justice system beyond that which appears likely through the existing cannabis cautioning system because civil penalties, rather than those involving court appearance, apply for subsequent offences. Interview studies with key informants in the police and judiciary such as that conducted by Sutton & McMillan (1999) in South Australia may also provide useful information on the cannabis market and the impact of the model on the operation of the criminal justice system. The capacity to evaluate the impact on the court system will be improved if drug offences are recorded by drug type.

Likely Impacts on community attitudes and understanding of the law

It is important that adoption of the recommended model is accompanied by a community education campaign about the changes to the laws. If this is done it is most likely that the laws will be understood and well supported by the Victorian public. Research on community understanding of the CEN system in South Australia (Heale, Hawks & Lenton, 1999) has shown that without a public education campaign there can be confusion about the legal status of expiable offences. For example, 53% of the sample believed that possession of 3 cannabis plants was legal. This suggests that a key element of any education campaign should be to emphasise that removing criminal penalties for minor cannabis offences does not mean that cannabis is legal. This can be lost in public debate characterised by terms such as 'legalisation' or 'decriminalisation'. Other research (Lenton & Ovenden, 1996) suggests that the use of explanations, such as civil offences are like those for 'speeding in a motor vehicle you can get a fine, but not a criminal record', can help to clarify the status of these offences. When this was done, 72% of the sample of 400 members of the general

public supported removal of criminal penalties for minor cannabis offences. Evaluation of community understanding and attitudes to the cannabis laws can be undertaken by similar community surveys. Particular attention should be given to ensure that the sample size is adequate to examine trends among younger respondents upon whom the legal changes are likely to have most impact. Public education campaigns about the changes to the laws can complement information provided by police to cannabis users at the time of issuing informal warnings, formal cautions or infringement notices.

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APPENDIX 1

TENDER DOCUMENTATION

APPENDIX 2

PERSONS PROVIDING LEGAL OPINIONS

Persons providing legal opinions

The following members of the legal profession provided feedback on the draft legislative model.

The authors of the report thank them for their comments and emphasise that in no way should they be held responsible for the recommended model or other material contained in this discussion document.

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APPENDIX 3

KEY INFORMANTS

Key informants

The following key informants provided feedback on the draft discussion document and draft legislative model.

The authors of the report thank the key informants for their comments and emphasise that in no way should they be held responsible for the material contained in this discussion document.

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APPENDIX 4

VIC NSW SA SCHOOL SURVEY DATA

School survey data NSW & SA (see page 15)

New South Wales students aged 12 to 16 years participated in standardised surveys in 1983, 1986, 1989 and 1992 (Donnelly, Oldenburg, Quine, Macaskill, Flaherty, Spooner & Lyle, 1992; CDHS&H, 1994).

In reporting on the results for the earlier three surveys, Donnelly *et al.* (1992) noted that the overall proportion of male students who had ever tried cannabis remained stable at about 25% from 1983 to 1989. By the 1992 survey, prevalence of lifetime cannabis use among male students was 31% (CDHS&H, 1994). The proportion of females who had ever tried cannabis declined from 22% in 1983 to 15% in 1989 (Donnelly *et al.*, 1992) before reaching 24% in 1992 (CDHS&H, 1994).

Data presented in Figure 28 and Figure 29, concerning the proportion of male and female students at each age level who had ever tried cannabis, was estimated from graphs in Donnelly *et al.* (1992). An upward trend in lifetime use with increasing age was apparent for the 1983, 1986 and 1989 surveys for males and females. Unfortunately, data from the 1992 survey were presented separately for age and gender in the CDHS&H (1994) report and so can not be included in the figures below. It may be seen that the proportion of 12 year olds who had ever used cannabis ranged from 5% in 1983 to 9% in 1989. The 16 year old age group had the highest prevalence of lifetime cannabis use at all three time points (42% in 1983, 44% in 1986 and 40% in 1989).

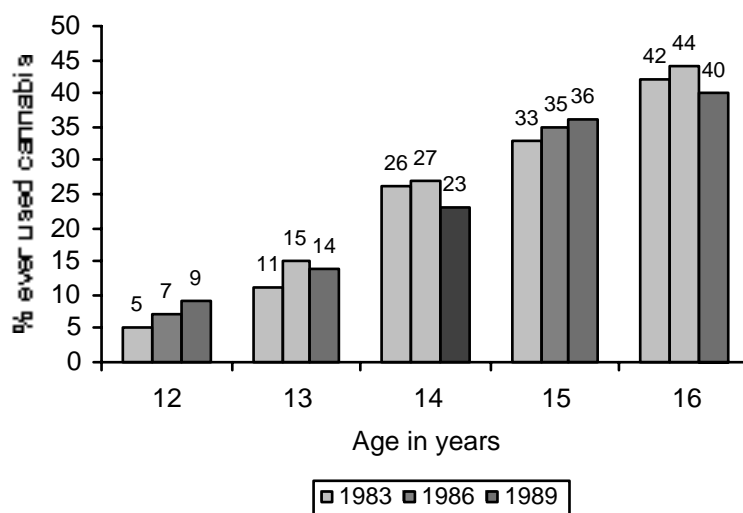


Figure 28: Proportion of NSW male students who have ever used cannabis by age, 1983-1989.

Source: Donnelly *et al.* (1992)

The prevalence of reported lifetime use of cannabis showed a downward trend among female students over the three surveys. In 1983, 36% of 16 year old females reported having ever used cannabis compared to 25% in 1989. The corresponding figures for 12 year olds were 5% in 1983 and 4% in 1989 (Donnelly *et al.*, 1992).

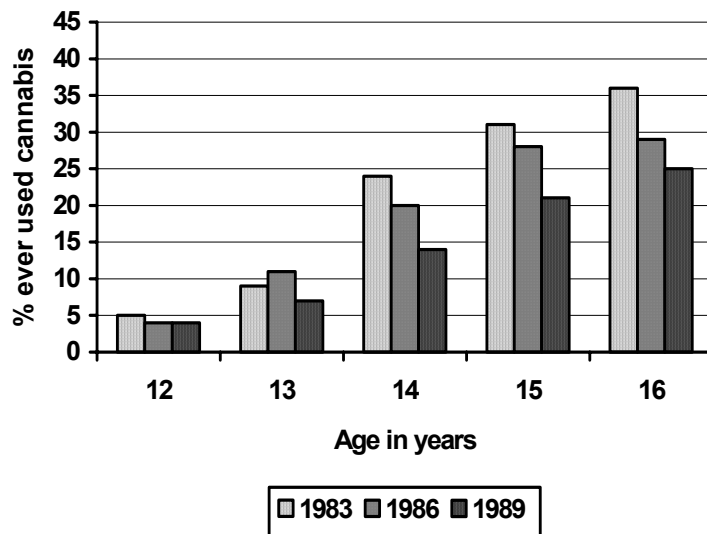


Figure 29: Proportion of NSW female students who have ever used cannabis by age, 1983-1989.

Source: Donnelly et al. (1992)

Figure 30 shows the proportion of NSW secondary students surveyed in 1992 who had ever tried cannabis (27%), used cannabis within the month prior to the survey (15%) and within the week prior to the survey (9%). Data is also presented separately for males and females. Males had a higher prevalence of lifetime use cannabis than females (31% compared to 24%) and were also more likely to have used in the month (19% compared to 13%) and the week (11% compared to 6%) preceding the survey (CDHS&H, 1994).

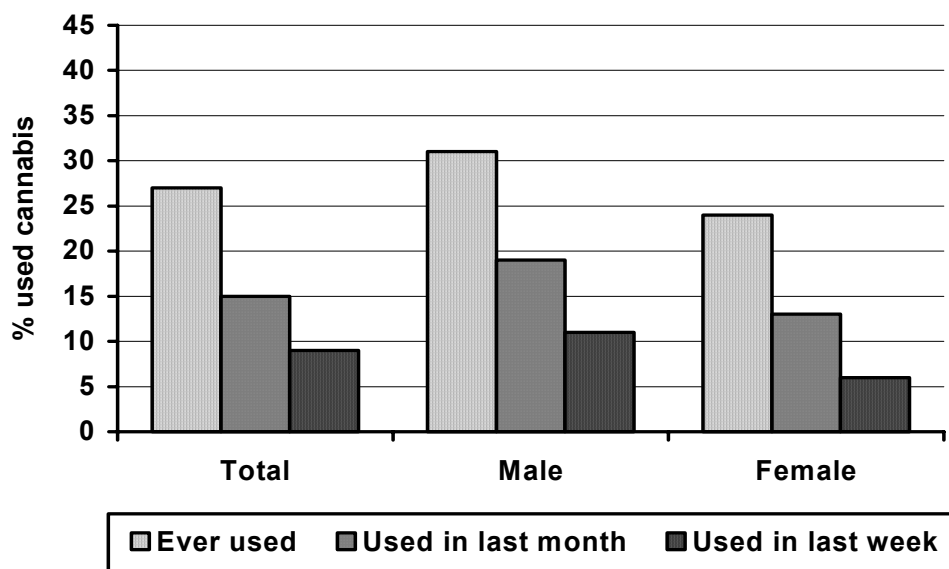


Figure 30: Proportion of NSW students who have ever used cannabis, used cannabis in the last month and used cannabis in the last week by gender, 1992.

Source: CDHS&H (1994)

Data is also available from the 1992 survey concerning prevalence of use according to age. As was the case for the 1983, 1986 and 1989 surveys, there appeared to be an increase in lifetime prevalence of cannabis use with age, from 7% of those aged 12 and under, to 25 % of those aged 13 to 15 years and 44% among the respondents aged 16 and over. The same trend was also found for use in the last month (4%, 14%, 24%) and use in the last week (2%, 8%, 14%) (Figure 31).

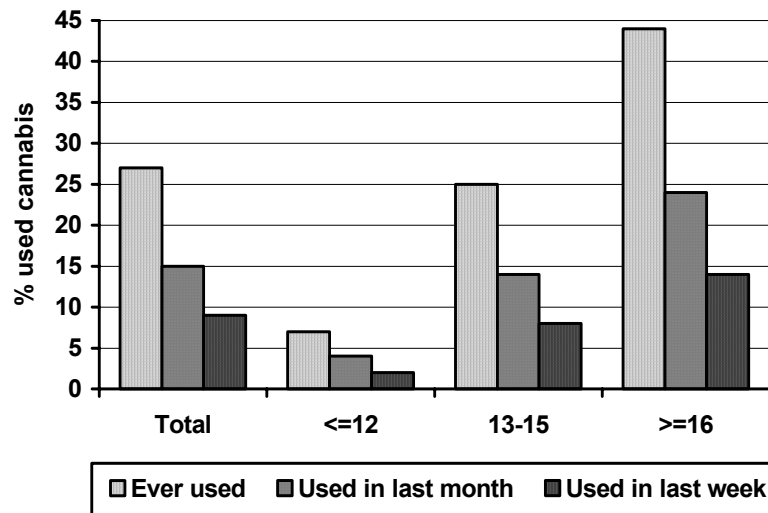


Figure 31: Proportion of NSW students who have ever used cannabis, used cannabis in the last month and used cannabis in the last week by age, 1992.

Source: CDHS&H (1994)

Factors found to be associated with cannabis use in the month prior to the survey were engaging in unsupervised recreation at night time, fewer common support networks, being older and having missed more school days through truancy. Respondents to the 1992 survey were also asked to indicate their perception of the risk associated with occasional cannabis use and with regular cannabis use. Occasional and regular cannabis use were seen as less dangerous by males than females and by older students than younger ones (CDHS&H, 1994). The data collected in the 1992 NSW school survey was compared to the findings of a Victorian school survey undertaken in the same year. This comparison will be discussed at a later point (*Use by Adolescents - Victoria*).

Approximately 3000 South Australian students aged 11 to 16 years were surveyed in 1986, 1987, 1988 and 1989. The proportion of respondents indicating they had ever used cannabis remained at 20% over the course of the surveys (Neill *et al.*, 1991).

Use by Adolescents – Victoria

These Figures are described on pages 18 to 19.

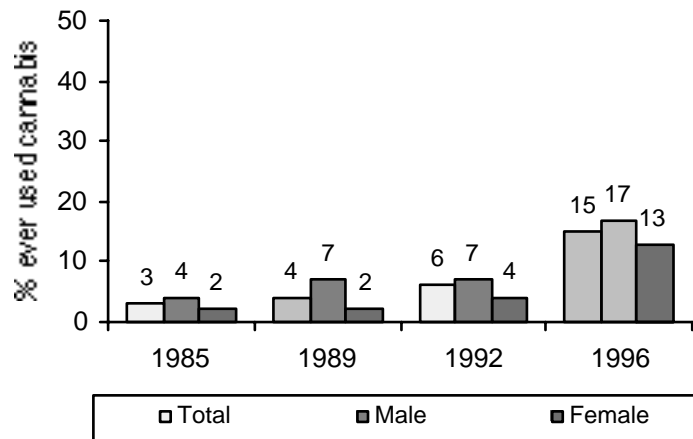


Figure 32: Proportion of Victorian Year 7 students who have ever used cannabis, by gender, 1985, 1989, 1992 & 1996.

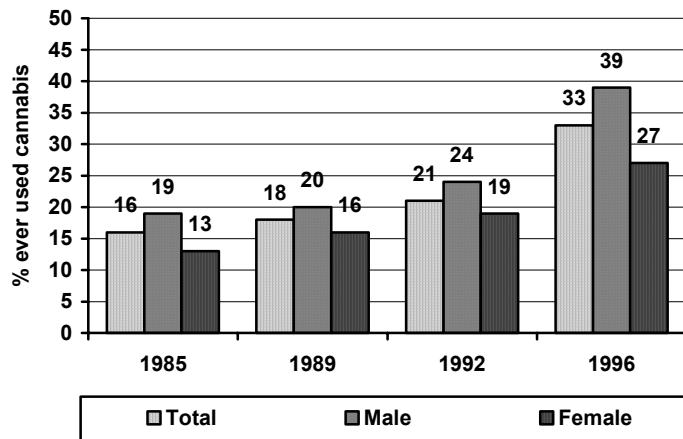


Figure 33: Proportion of Victorian Year 9 students who have ever used cannabis, by gender, 1985, 1989, 1992 & 1996.

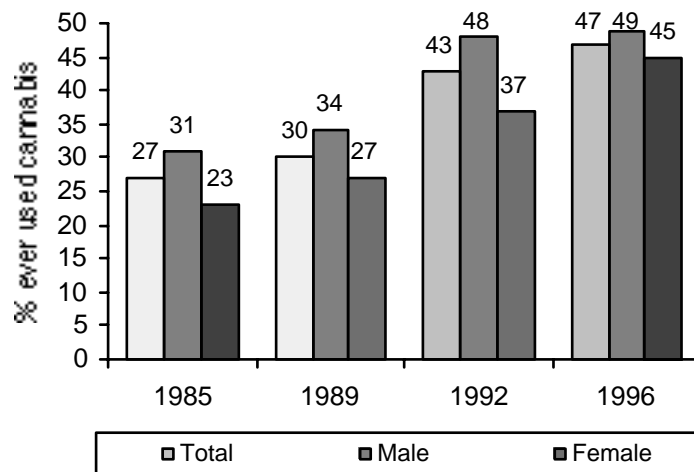


Figure 34: Proportion of Victorian Year 11 students who have ever used cannabis, by gender, 1985, 1989, 1992 & 1996.

Sources Figures 32 to 34: The Roy Morgan Research Centre, Pty. Ltd. (1993); Drug Treatment Services Unit (1999)

There was no difference noted in the rates of cannabis use within the last month between 1985 and 1989 for Year 7, 9 or 11 students. However, between 1989 and 1992 there was a significant increase in the proportion of Year 9 and Year 11 students reporting recent use. It is not clear to what extent improved retention rates contributed to the differences observed (The Roy Morgan Research Centre, 1993). The data relating to use in the last month by Year 7, Year 9 and Year 11 students is presented below (Figures 35 to 37).

The data from the 1996 survey indicated a significant increase between 1992 and 1996 in the level of cannabis use within the last month by Year 7 and Year 9 students. This was not the case for year 11 students.

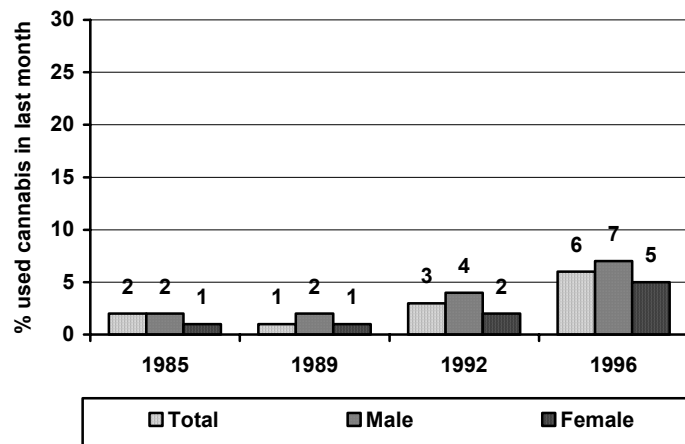


Figure 35: Proportion of Victorian Year 7 students who have used cannabis in the last month, by gender, 1985, 1989, 1992 & 1996.

Source: The Roy Morgan Research Centre, Pty. Ltd. (1993); Drug Treatment Services Unit (1999)

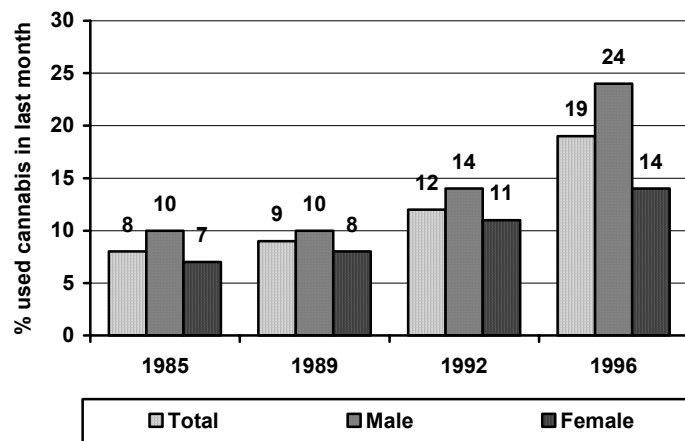


Figure 36: Proportion of Victorian Year 9 students who have used cannabis in the last month, by gender, 1985, 1989, 1992 & 1996.

Source: The Roy Morgan Research Centre, Pty. Ltd. (1993); Drug Treatment Services Unit (1999)

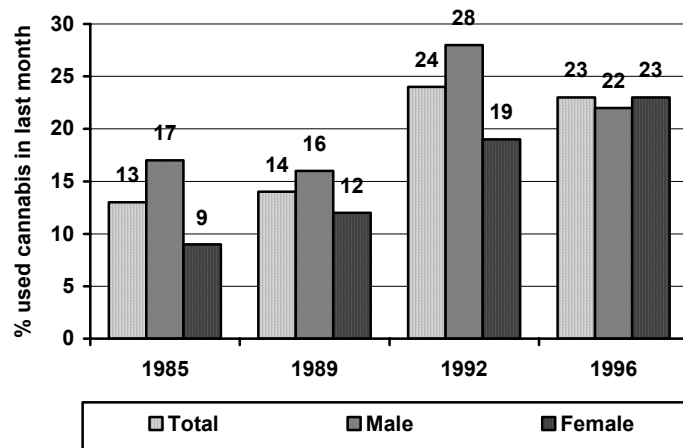


Figure 37: Proportion of Victorian Year 11 students who have used cannabis in the last month, by gender, 1985, 1989, 1992 & 1996.

Source: The Roy Morgan Research Centre, Pty. Ltd. (1993); Drug Treatment Services Unit (1999)

Figure 38 to Figure 40 present data concerning having ever used cannabis, using cannabis within the month preceding the 1992 and 1996 surveys and using cannabis within a week of each survey. As would be expected, the proportion of students who had ever used cannabis increased with age from 5.6% of Year 7s to 42.5% of Year 11s in 1992. The data for 1992 are represented by a line graph. In 1996, the rate of ever used rose from 14.5% of Year 7s to 46.8% of Year 11s. The 1996 survey also included Year 12s. Lifetime prevalence of cannabis use among this group was 51.9%. Data for 1996 are presented as a column graph. As is generally the case with adult populations, male students were more likely to have ever used cannabis than female students and also to continue to use at each year level (DH&CS, 1993; The Roy Morgan Research Centre, 1993; DTSU, 1999).

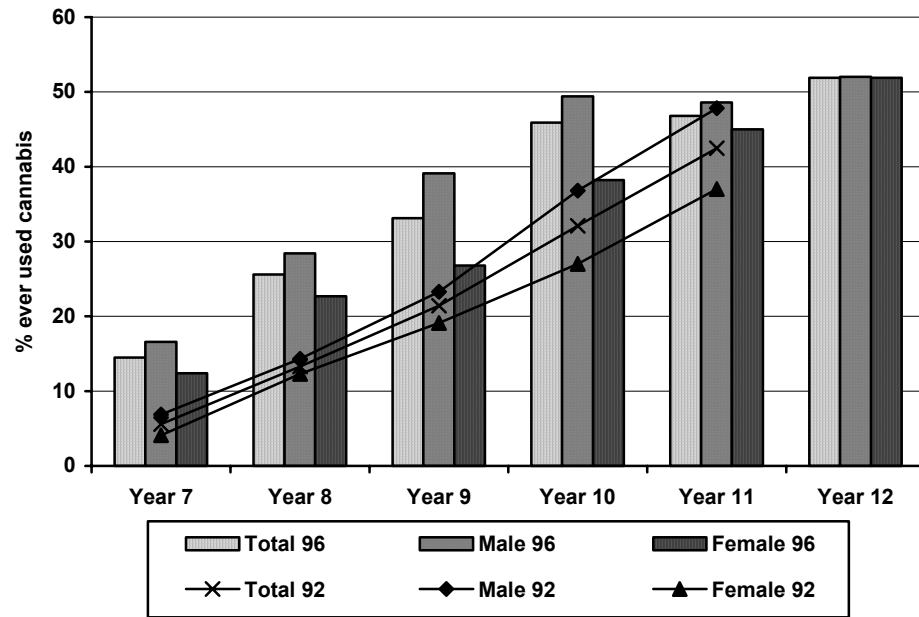


Figure 38: Proportion of Victorian students who had *ever* used cannabis by year level and gender, 1992 and 1996.

Source: The Roy Morgan Research Centre, Pty. Ltd. (1993); Drug Treatment Services Unit (1999)

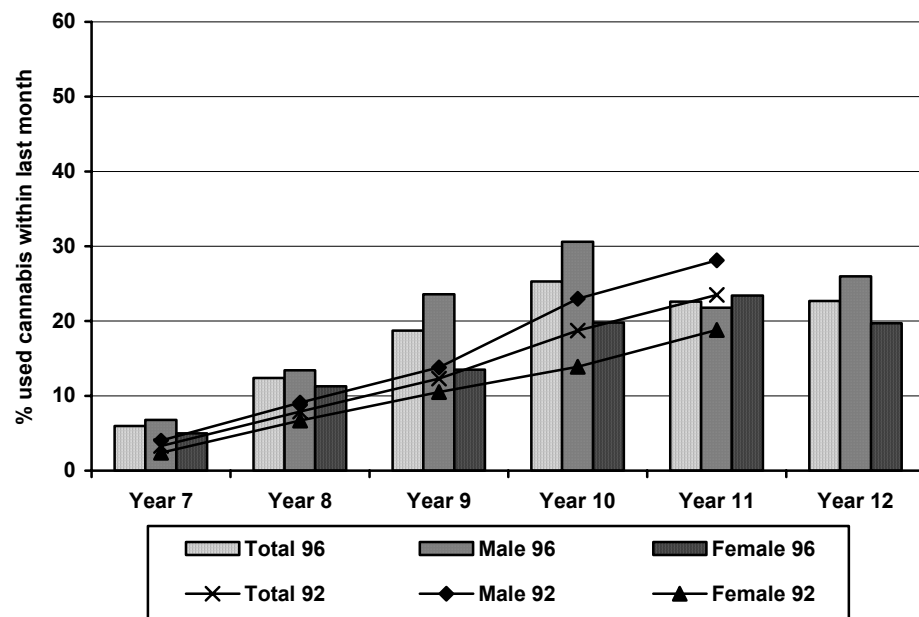


Figure 39: Proportion of Victorian students who had used cannabis within the *last month* by year level and gender, 1992 and 1996.

Source: The Roy Morgan Research Centre, Pty. Ltd. (1993); Drug Treatment Services Unit (1999)

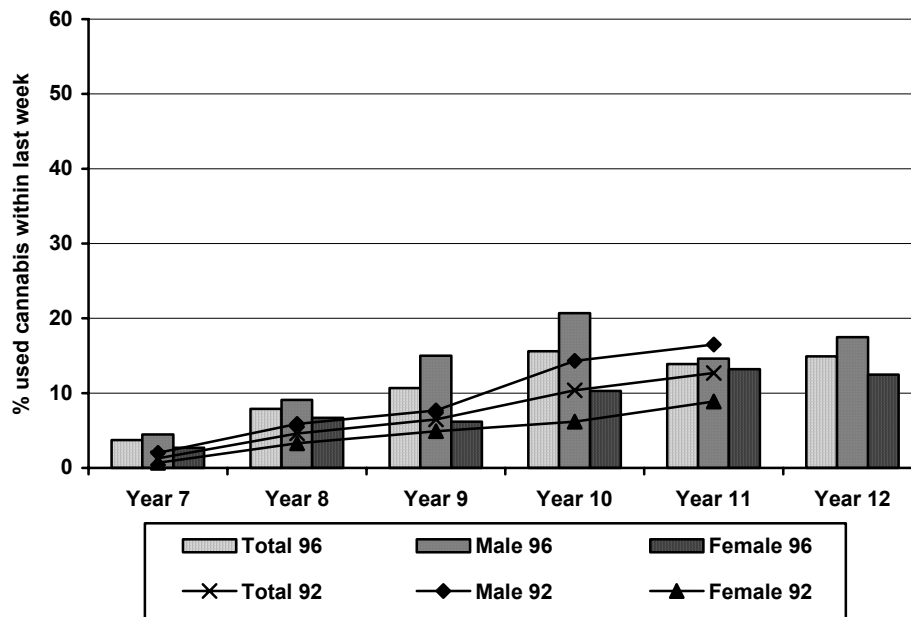


Figure 40: Proportion of Victorian students who had used cannabis within the *last week* by year level and gender, 1992 and 1996.

Source: The Roy Morgan Research Centre, Pty. Ltd. (1993); Drug Treatment Services Unit (1999)

A similar pattern was observed for use within the last month. In 1992 monthly use increased from 3.3% among Year 7s to 23.5% in Year 11. Six percent of the Year 7s surveyed in 1996 indicated use within the last month. This rose to 25.3% among Year 10 students, who had the highest level of cannabis use within the past month, and then decreased to 22.6% of Year 11 students and 22.7% of Year 12 students.

In 1992 weekly use of cannabis rose from 1.3% to 12.7% across the year levels. In 1996 weekly use among Years 7s was reported by 3.7% and by 15.6% of Year 10s. Weekly use then fell to 13.9% among Year 11s and 14.9% among Year 12 students.

The perceived dangerousness of cannabis declined with age. In 1992 cannabis was regarded as the most dangerous drug by Year 7 students (as compared to alcohol, tobacco, pain relievers, inhalants and a range of other illicit drugs). However, among Year 11 students cannabis was regarded as less dangerous than pain relievers. The perception of danger appeared to be related to experience with the drug, that is, students who had used cannabis were less likely to regard it as potentially dangerous than those without such experience (DH&CS, 1993). Students surveyed in 1996 still regarded *smoking marijuana regularly* to be dangerous, but the level of perceived dangerousness was lower than that reported in 1992 (DTSU, 1999).

Among Year 11 students surveyed in 1992, the average age of initiation for cigarette use (12.1 years) was significantly lower than for alcohol (12.9 years) and cannabis (14.8 years) (Figure 41). There was no difference between Year 11 males and females concerning the average age of initiation of cannabis use (The Roy Morgan Research Centre Pty. Ltd., 1993).

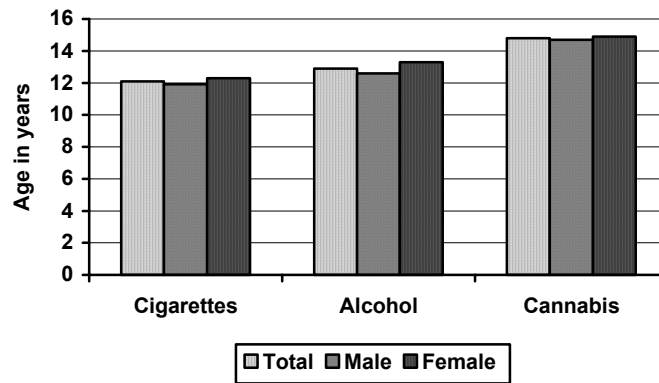


Figure 41: Average age of initial use of cigarettes, alcohol and cannabis, 1992.

Source: The Roy Morgan Research Centre, Pty. Ltd. (1993)

The results of the 1992 Victorian secondary school survey were compared to the results of a similar study conducted in NSW schools (Figure 42). Having ever used cannabis and having used cannabis in the week prior to the survey were significantly more prevalent among the NSW students than the Victorian students surveyed (CDHS&H, 1994).

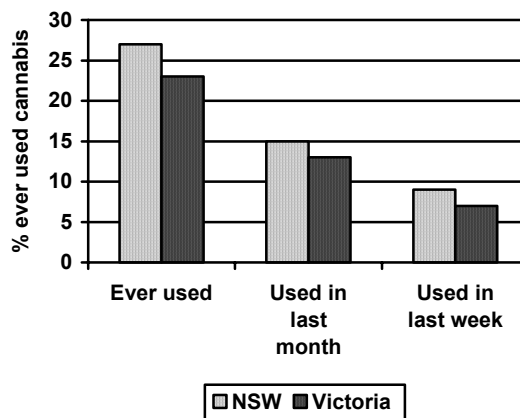


Figure 42: Proportion of NSW and Victorian students who have ever used cannabis, used cannabis in the last month and used cannabis in the last week, 1992.

Source: CDHS&H (1994)

Once again, males in both jurisdictions were significantly more likely to have ever used cannabis and to have used cannabis more recently than females. The same was true of older students compared to younger ones. Students from NSW rated cannabis as being less dangerous than Victorian students. A range of demographic characteristics were found to be associated with cannabis use in the past month. Students whose night time recreation is unsupervised, who have fewer common support networks, who are older or who wag school more frequently were more likely to have used cannabis within the last month than other students in both NSW and Victoria. A further variable, not living with both parents, was also found to be related to cannabis use in the last month in Victoria (CDHS&H, 1994).

APPENDIX 5

CHARACTERISTICS OF CANNABIS CALLERS TO DIRECT LINE

(see page 26)

Figure 43 shows that the number of calls concerning cannabis decreased with age from 48.8 % of the 0-14 year old group to 20.7% of the 26-30 year old group. However, those relating to heroin rose from 6.6% of the 0-14 year old group and peaked at 32.8% of the 19-25 year old group. Similarly, calls relating to alcohol rose from a low of 9.6% in the 15-18 year old group to 21.3% of the 26-30 year old group (Lanagan, 1997).

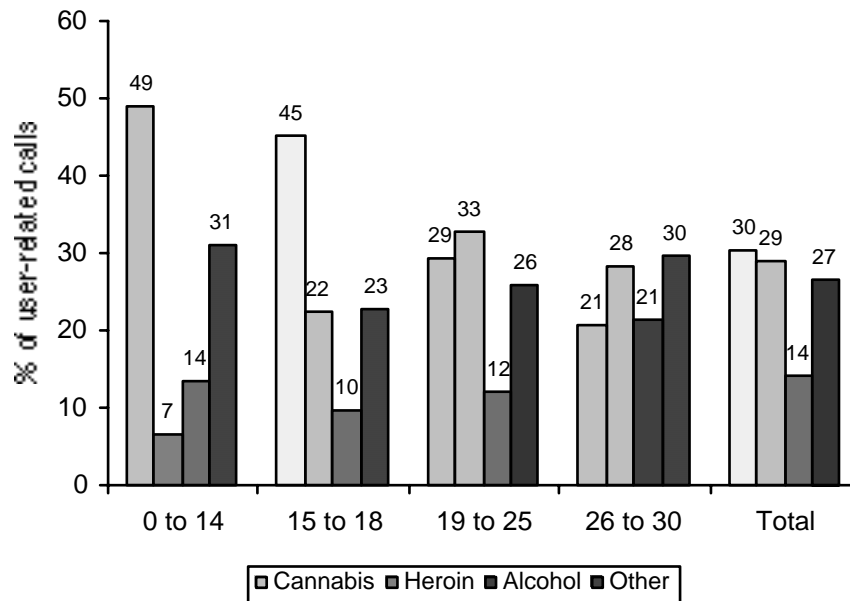


Figure 43: Calls to Direct Line 1 September 1996 to 31 August 1997: reported drug of use by age of user.

Source: Lanagan (1997)

Of calls referring to cannabis, most concerned use by 19 to 25 year old males (1290 calls). Cannabis use by 15 to 18 year old males was the subject of 675 calls and use by 26 to 30 year old males the subject of 462 calls. There were 75 calls concerning cannabis use by 0 to 14 year old males (Figure 44). On the whole, there were less calls concerning cannabis use by females. The most calls related to use by females aged 19 to 25 (429 calls), followed by 15 to 18 year olds (299 calls), 26 to 30 year olds (203 calls) and 0 to 14 year olds (43 calls) (Lanagan, 1997).

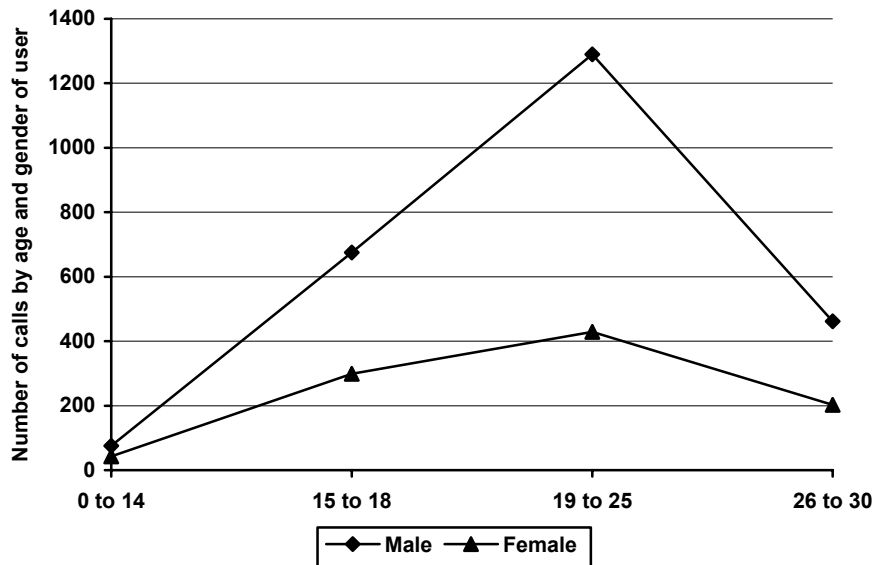


Figure 44: Calls to Direct Line 1 September 1996 to 31 August 1997: reported cannabis use by age and gender of user.

Source: Lanagan (1997)

Calls concerning cannabis use were placed by a variety of people, including the user, parents, partners, siblings, sons/daughters, other relatives, friends and professionals (eg. employer, teacher, police, health/welfare worker). The number of callers of each type varied with the age of the user. Among younger users, 0 to 14 years and 15 to 18 years, parents were the most likely to place the call to Direct Line (86 calls and 715 calls respectively). However, older users were more likely to call themselves with the number of calls increasing from 8 among the calls concerning 0 to 14 year olds to 491 of the calls concerning 19 to 25 year olds. There was also an increase in the number of calls made by partners as age increased. This is to be expected as more older users would be likely to have a partner than younger users.

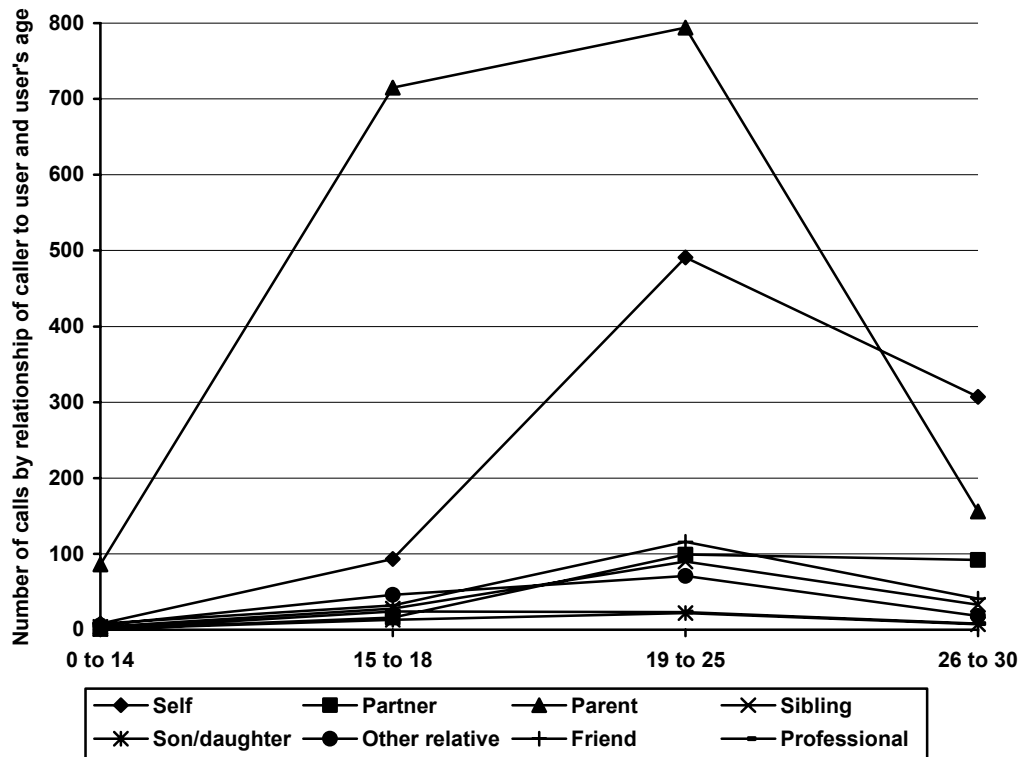


Figure 45: Calls to Direct Line 1 September 1996 to 31 August 1997: number of calls referring to cannabis by relationship of caller to user and user's age.

Source: Lanagan (1997)

A further analysis of Direct Line data was carried out by Kellehear, Lanagan and Peterson (1997). In this study calls received during a one year period, 23 May 1996 to 22 May 1997 were analysed. In total, there were 38,460 calls received, 4,218 (11%) of which referred to cannabis. Of all the calls relating to cannabis, 62% were made by females, 37% by males and 1% not recorded (Figure 45).

The pattern of calls differed between males and females. Of all the calls made by males, the majority (62.1%) were users calling on their own behalf, while 22.3% were fathers calling about their child(ren). Calls concerning the cannabis use of a friend made up 5.4% of all calls by males and calls by partners, siblings, son/daughter, other relatives and health/welfare workers each accounted for less than 5% of calls made by males (Figure 46). In contrast, calls received by females were less likely to be about themselves (19.6% of calls made by females) and more likely to be about their child(ren) (50%). More females made calls concerning their partner's cannabis use than males (10.9% compared to 4.2%). Calls about friends comprised 6.4% of calls and about siblings a further 5.5%. Calls by other relatives, son/daughter and health and welfare workers each represented less than 5% of calls made by females (Kellehear *et al.*, 1997).

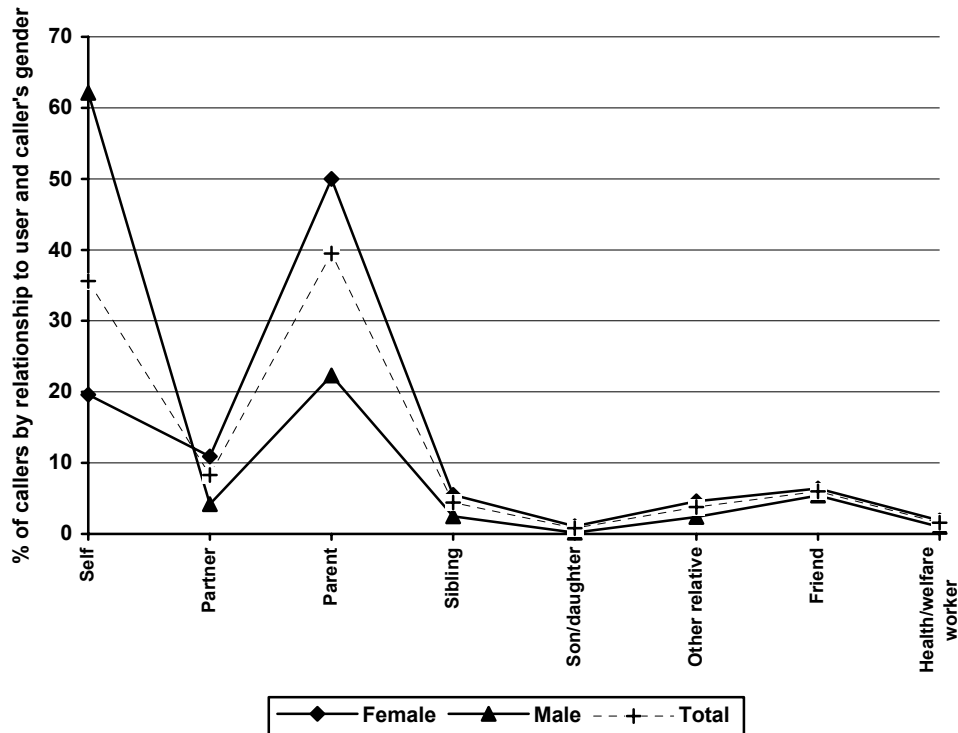


Figure 46: Calls to Direct Line 23 May 1996 to 22 May 1997: proportion of calls referring to cannabis by relationship of caller to user and caller's gender.

Source: Kellehear, Lanagan & Peterson (1997).

Kellehear *et al.* (1997) also investigated why the caller contacted Direct Line in relation to cannabis. A total of 3156 calls (60%) were received in relation to a 'drug problem', that is, where cannabis use is seen as a difficulty requiring more than information or referral advice. A further 1060 calls (20.2%) concerning cannabis sought referral advice and 1044 calls (19.8%) required information only (note: callers may have telephoned for more than one reason. The percentages provided are of the total number of reasons, not of the total number of calls).

APPENDIX 6

GENDER & AGE DATA ALL OFFENCES, DRUG OFFENCES, AND CANNABIS OFFENCES VICTORIA

Table 20: Overall number of charges laid for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June), by gender.

Source: Strategic Development Department, Victoria Police.

	ALL OFFENCES					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Male	201515	80.2	200289	80.8	104316	78.5
Female	48465	19.3	46081	18.6	27112	20.4
Unknown	1140	0.5	1625	0.6	1297	0.1
Total	251120	100.0	247995	100.0	132725	100.0
	ALL DRUG OFFENCES					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Male	21227	84.0	22513	83.8	12316	81.9
Female	3968	15.7	4138	15.4	2479	16.5
Unknown	90	0.3	215	0.8	236	1.6
Total	25285	100.0	26866	100.0	15031	100.0
	ALL CANNABIS OFFENCES					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Male	15310	84.5	14629	84.4	6960	82.5
Female	2744	15.1	2547	14.7	1327	15.7
Unknown	71	0.4	161	0.9	147	1.7
Total	18125	100.0	17337	100.0	8434	100.0

The regulation of cannabis possession, use and supply

Table 21: Overall number of distinct persons* charged for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June) by gender.

ALL OFFENCES						
	1996		1997		1998	
	n	%	n	%	n	%
Male	58368	79.2	57454	78.8	28901	78.2
Female	14909	20.2	14758	20.3	7556	20.5
Unknown	465	0.6	657	0.9	491	1.3
Total	73742	100.0	72869	100.0	36948	100.0
ALL DRUG OFFENCES						
	1996		1997		1998	
	n	%	n	%	n	%
Male	9488	83.9	9867	84.0	5271	82.3
Female	1780	15.7	1792	15.3	1042	16.3
Unknown	43	0.4	83	0.7	93	1.4
Total	11311	100.0	11742	100.0	6406	100.0
ALL CANNABIS OFFENCES						
	1996		1997		1998	
	n	%	n	%	n	%
Male	7164	84.7	6803	85.0	3200	82.7
Female	1262	14.9	1134	14.2	604	15.6
Unknown	32	0.4	64	0.8	64	1.6
Total	8458	100.0	8001	100.0	3868	100.0

* The counting rule used for number of persons is based on a person being counted only for the first time they were charged with any offence, any drug offence and any cannabis offence in a given month

Table 22: Persons processed for possession/use of cannabis, cultivate cannabis and traffic cannabis 1996, 1997 and 1998 (Jan-June), by gender.

Source: Strategic Development Department, Victoria Police.

POSSESS/USE						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Male	5527	86.4	5264	86.7	2423	84.2
Female	855	13.4	761	12.5	407	14.2
Unknown	14	0.2	47	0.8	46	1.6
Total	6396	100.0	6072	100.0	2876	100.0
CULTIVATE						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Male	1774	82.6	1586	83.3	877	80.8
Female	358	16.7	302	15.9	185	17.1
Unknown	17	0.8	15	0.8	23	2.1
Total	2149	100.0	1903	100.0	1085	100.0
TRAFFIC						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
Male	1028	82.8	1092	82.2	556	82.0
Female	211	17.0	219	16.5	110	16.2
Unknown	3	0.2	18	1.3	12	1.8
Total	1242	100.0	1329	100.0	678	100.0

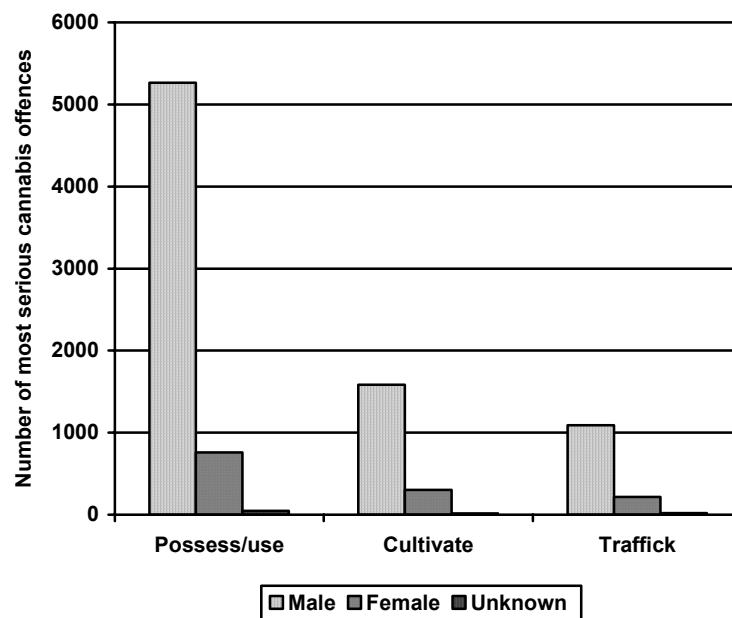


Figure 47: Overall number of charges laid for most serious cannabis offences by gender, 1997.

Source: Strategic Development Department, Victoria Police.

The regulation of cannabis possession, use and supply

Table 23: Overall number of charges laid for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June), by age group.

Source: Strategic Development Department, Victoria Police.

AGE	ALL OFFENCES					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	199	0.1	332	0.1	107	0.1
10-14	16648	6.6	15472	6.2	7182	5.4
15-19	67999	27.1	65507	26.4	31430	23.7
20-24	49323	19.6	51816	20.9	28796	21.7
25-29	39117	15.6	40578	16.4	21925	16.5
30-34	27406	10.9	26265	10.6	14567	11.0
35-39	18590	7.4	17632	7.1	11471	8.6
40-44	12414	4.9	11334	4.6	6063	4.6
45-49	8771	3.5	7815	3.2	5146	3.9
50-54	4264	1.7	4727	1.9	2347	1.8
55-59	2307	0.9	2363	1.0	1446	1.1
60-64	1482	0.6	1792	0.7	696	0.5
65-69	1084	0.4	815	0.3	326	0.2
70-74	486	0.2	345	0.1	304	0.2
75-79	394	0.2	241	0.1	105	0.1
80+	120	0.0	128	0.1	53	0.0
UK	516	0.2	833	0.3	761	0.6
Total	251120	100.0	247995	100.0	132725	100.0
	ALL DRUG OFFENCES					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	3	0.0	0	0.0	1	0.0
10-14	407	1.6	464	1.7	218	1.5
15-19	5833	23.1	6605	24.6	3459	23.0
20-24	6332	25.0	6898	25.7	4055	27.0
25-29	4647	18.4	5062	18.8	2798	18.6
30-34	3395	13.4	3127	11.6	1795	11.9
35-39	2264	9.0	2134	7.9	1121	7.5
40-44	1212	4.8	1303	4.8	799	5.3
45-49	590	2.3	609	2.3	344	2.3
50-54	298	1.2	334	1.2	192	1.3
55-59	169	0.7	111	0.4	92	0.6
60-64	75	0.3	96	0.4	59	0.4
65-69	26	0.1	45	0.2	17	0.1
70-74	9	0.0	4	0.0	6	0.0
75-79	0	0.0	2	0.0	0	0.0
80+	0	0.0	0	0.0	0	0.0
UK	25	0.1	72	0.3	75	0.5
Total	25285	100.0	26866	100.0	15031	100.0

Table 23 cont: Overall number of charges laid for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June), by age group

Source: Strategic Development Department, Victoria Police.

ALL CANNABIS OFFENCES						
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	3	0.0	0	0.0	1	0.0
10-14	339	1.9	333	1.9	118	1.4
15-19	4156	22.9	3775	21.8	1719	20.4
20-24	4381	24.2	4235	24.4	1988	23.6
25-29	3391	18.7	3316	19.1	1524	18.1
30-34	2414	13.3	2130	12.3	1147	13.6
35-39	1600	8.8	1514	8.7	794	9.4
40-44	918	5.1	963	5.6	512	6.1
45-49	402	2.2	499	2.9	265	3.1
50-54	252	1.4	279	1.6	158	1.9
55-59	153	0.8	98	0.6	87	1.0
60-64	64	0.4	91	0.5	58	0.7
65-69	24	0.1	36	0.2	17	0.2
70-74	9	0.0	11	0.1	6	0.1
75-79	0	0.0	2	0.0	0	0.0
80+	0	0.0	0	0.0	0	0.0
UK	19	0.1	55	0.3	40	0.5
Total	18125	100.0	17337	100.0	8434	100.0

The regulation of cannabis possession, use and supply

Table 24: Overall number of distinct persons* charged for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June), by age group

Source: Strategic Development Department, Victoria Police.

	ALL OFFENCES					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	96	0.1	94	0.1	68	0.2
10-14	7484	10.1	6848	9.4	3145	8.5
15-19	21196	28.7	20422	28.0	10228	27.7
20-24	13863	18.8	14230	19.5	7300	19.7
25-29	9758	13.2	10272	14.1	5321	14.4
30-34	6966	9.4	7040	9.7	3678	9.9
35-39	4900	6.6	4870	6.7	2560	6.9
40-44	3182	4.3	3253	4.5	1596	4.3
45-49	2185	3.0	2069	2.8	1047	2.8
50-54	1305	1.8	1271	1.7	701	1.9
55-59	884	1.2	762	1.0	390	1.1
60-64	549	0.7	515	0.7	255	0.7
65-69	492	0.7	419	0.6	166	0.4
70-74	339	0.5	259	0.4	124	0.3
75-79	181	0.2	147	0.2	75	0.2
80+	110	0.1	92	0.1	47	0.1
UK	252	0.3	306	0.4	264	0.7
Total	73742	100.0	72869	100.0	36965	100.0
	ALL DRUG OFFENCES					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	2	0.0	0	0.0	1	0.0
10-14	256	2.3	298	2.5	128	2.0
15-19	2966	26.2	3163	26.9	1639	25.6
20-24	2905	25.7	3119	26.6	1749	27.3
25-29	2037	18.0	2109	18.0	1172	18.3
30-34	1385	12.2	1308	11.1	724	11.3
35-39	881	7.8	832	7.1	465	7.3
40-44	472	4.2	478	4.1	263	4.1
45-49	207	1.8	207	1.8	117	1.8
50-54	97	0.8	112	1.0	62	1.0
55-59	50	0.4	41	0.3	33	0.5
60-64	27	0.2	28	0.2	17	0.3
65-69	9	0.1	12	0.1	5	0.1
70-74	4	0.0	5	0.0	3	0.0
75-79	0	0.0	1	0.0	0	0.0
80+	0	0.0	0	0.0	0	0.0
UK	13	0.1	29	0.2	28	0.4
Total	11311	100.0	11742	100.0	6406	100.0

Table 24 cont: Overall number of distinct persons* charged for all offences, all drug offences and all cannabis offences, 1996, 1997 and 1998 (Jan-June), by age group

Source: Strategic Development Department, Victoria Police.

	ALL CANNABIS OFFENCES					
	1996 (Jan-Dec)		1997 (Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	2	0.0	0	0.0	1	0.0
10-14	229	2.7	234	2.9	83	2.1
15-19	2247	26.6	2025	25.3	922	23.8
20-24	2102	24.9	2013	25.2	952	24.6
25-29	1497	17.7	1430	17.9	678	17.5
30-34	1005	11.9	920	11.5	480	12.4
35-39	662	7.8	622	7.8	337	8.7
40-44	372	4.4	376	4.7	194	5.0
45-49	159	1.9	181	2.3	96	2.5
50-54	88	1.0	97	1.2	53	1.4
55-59	49	0.6	37	0.5	30	0.8
60-64	26	0.3	27	0.3	17	0.4
65-69	8	0.1	11	0.1	5	0.1
70-74	4	0.0	4	0.0	3	0.1
75-79	0	0.0	1	0.0	0	0.0
80+	0	0.0	0	0.0	0	0.0
UK	8	0.0	23	0.3	17	0.4
Total	8458	100.0	8001	100.0	3868	100.0

* *The counting rule used for number of persons is based on a person being counted only for the first time they were charged with any offence, any drug offence and any cannabis offence in a given month*

The regulation of cannabis possession, use and supply

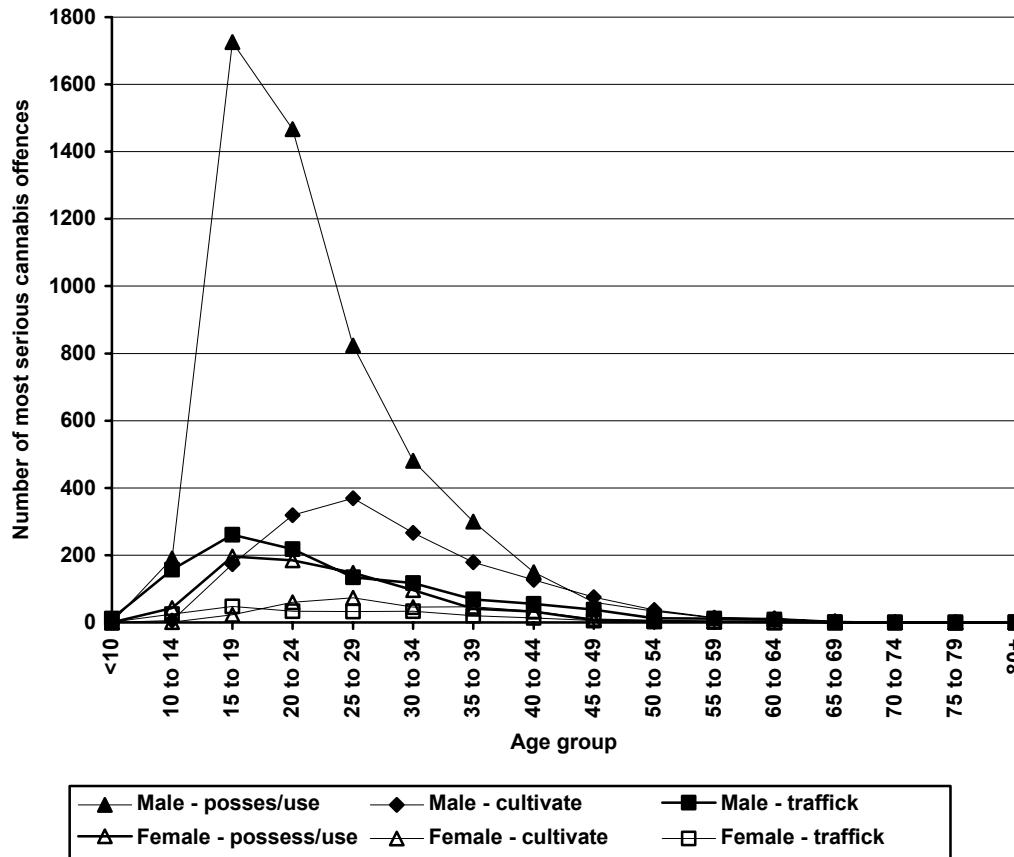


Figure 48: Overall number of distinct persons* charged for all offences, all drug offences and all cannabis offences by age and gender, 1997

Source: Strategic Development Department, Victoria Police.

* The counting rule used for number of persons is based on a person being counted only for the first time they were charged with any offence, any drug offence and any cannabis offence in a given month

Table 25: Persons processed for possession/use of cannabis, cultivation of cannabis and trafficking of cannabis, 1996, 1997 and 1998 (Jan-June), by age group

Source: Strategic Development Department, Victoria Police.

	POSSESS/USE					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	1	0.0	0	0.0	1	0.0
10-14	201	3.1	233	3.8	80	2.8
15-19	2051	32.1	1934	31.9	885	30.8
20-24	1729	27.0	1664	27.4	792	27.5
25-29	1050	16.4	976	16.1	466	16.2
30-34	633	9.9	583	9.6	287	10.0
35-39	373	5.8	344	5.7	198	6.9
40-44	214	3.3	184	3.0	85	3.0
45-49	77	1.2	68	1.1	37	1.3
50-54	37	0.6	37	0.6	25	0.9
55-59	15	0.2	16	0.3	9	0.3
60-64	12	0.2	11	0.2	2	0.1
65-69	0	0.0	2	0.0	2	0.1
70-74	0	0.0	1	0.0	0	0.0
75-79	0	0.0	0	0.0	0	0.0
80+	0	0.0	0	0.0	0	0.0
UK	3	0.0	19	0.3	7	0.2
Total	6396	100.0	6072	100.0	2876	100.0
	CULTIVATION					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	0	0.0	0	0.0	0	0.0
10-14	6	0.3	7	0.4	1	0.1
15-19	258	12.0	197	10.4	93	8.6
20-24	449	20.9	379	19.9	213	19.6
25-29	461	21.5	449	23.6	233	21.5
30-34	382	17.8	316	16.6	184	17.0
35-39	278	12.9	226	11.9	137	12.6
40-44	157	7.3	161	8.4	101	9.3
45-49	64	3.0	85	4.5	43	4.0
50-54	42	2.0	43	2.3	31	2.9
55-59	25	1.2	16	0.8	18	1.7
60-64	13	0.6	12	0.6	16	1.5
65-69	5	0.2	5	0.3	4	0.4
70-74	3	0.1	2	0.1	3	0.3
75-79	0	0.0	1	0.1	0	0.0
80+	0	0.0	0	0.0	0	0.0
UK	6	0.3	4	0.2	8	0.7
Total	2149	100.0	1903	100.0	1085	100.0

The regulation of cannabis possession, use and supply

Table 25 cont: Persons processed for possession/use of cannabis, cultivation of cannabis and trafficking of cannabis, 1996, 1997 and 1998 (Jan-June), by age group.

Source: Strategic Development Department, Victoria Police.

	TRAFFIC					
	1996 (Jan-Dec)		1997(Jan-Dec)		1998 (Jan-June)	
	n	%	n	%	n	%
<10	1	0.1	0	0.0	0	0.0
10-14	40	3.2	12	0.9	10	1.5
15-19	222	17.9	183	13.8	109	16.1
20-24	282	22.7	310	23.3	142	20.1
25-29	214	17.2	254	19.1	116	17.1
30-34	164	13.2	166	12.5	116	17.1
35-39	125	10.1	157	11.8	62	9.1
40-44	80	6.4	89	6.7	44	6.5
45-49	49	3.9	69	5.2	33	4.9
50-54	34	2.7	46	3.5	17	2.5
55-59	22	1.8	15	1.1	13	1.9
60-64	5	0.4	14	1.1	5	0.7
65-69	3	0.2	9	0.7	3	0.4
70-74	1	0.1	1	0.1	0	0.0
75-79	0	0.0	0	0.0	0	0.0
80+	0	0.0	0	0.0	0	0.0
UK	0	0.0	4	0.3	8	1.2
Total	1242	100.0	1329	100.0	678	100.0

Magistrates Court data – All drugs combined

Data concerning drug-related offences committed in Victoria was sought from the Criminal Justice Statistics and Research Unit (CJS&RU). Statistics relating to drug charges heard in Victorian Magistrates' Courts between January 1996 and June 1998 was available according to age, sex, charge (use, possess, traffic, cultivate and other), plea and outcome. It should be noted that all data refers to charges heard, rather than individual persons. It is possible that some people may have committed two or more offences and are therefore counted more than once. Unlike the police data presented above, all charges a person faces are included, not just the most serious offence.

Unfortunately, data recorded by Magistrates' Courts did not distinguish between cannabis offences and other drug-related offences until March 1998. As the data available at the time of preparing this report only extended until June 1998, no separate data for cannabis related offences was able to be provided. For this reason this data has been presented here in an appendix. However, it may reasonably be assumed that some offences probably involve only cannabis, eg. cultivation. Where appropriate, data from the 1997 Sentencing Statistics (Magistrates' Court Victoria, 1997) is also referred to.

Charges finalised

There were a total of 302,457 charges finalised in Victorian Magistrates' Courts between 1 January and 31 December 1997 (Magistrates' Court Victoria, 1997). Of these, 24,564 were drug-related (use, possess, traffic, cultivate, other) (CJS&RU). This represents a rate of 8.1% of all charges heard in Victorian Magistrates' Courts in 1997. The corresponding figures for 1996 were 290,888 and 24,564. Drug-related offences occurred at a rate of 8.4%. Note that the data for 1998 represent only 6 months (January to June).

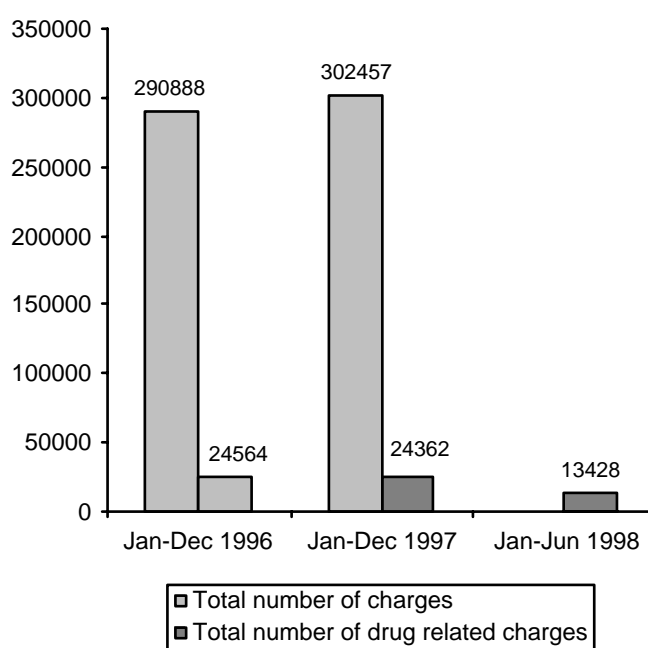


Figure 49: Number of charges (drug and non drug) and drug charges heard in Victorian Magistrates' Courts, 1996-1998.

Source: Magistrates' Court Victoria (1997); Criminal Justice Statistics and Research Unit database.

Age

Data concerning the number of drug charges heard each year according to age was obtained from the CJS&RU. Data was collapsed into the following age categories; 14 years, 15-19 years, 20-24 years, 25-29 years, 30-34 years, 35-39 years, 40-44 years, 45-49 years and 50+ years. These categories were selected to enable comparison with Victorian Police data which is only available in the above age-brackets. A similar pattern was evident for each year of data collection. As would be expected, there was a steep increase with age in the number of drug charges heard up to 20-24 years, after which the number of charges gradually dropped away. The number of drug charges heard in Victorian Magistrates' Courts peaked in the 20-24 year old age group in all years, reaching 6437 (26.4%) in 1996 and 6660 (27.1%) in 1997. The comparable figure for 1998 was 3649 (27.2%), however this represents only the first six months of the year (January to June). In each year there were a number of charges for which age was not recorded or a very unlikely value supplied (eg. 3 years). Such cases appear as 'unknown' in Table 26 below.

Table 26: Number and percentage of drug charges heard in Victorian Magistrates' Courts by age, 1996-1998.

Source: Criminal Justice Statistics and Research Unit database.

	Jan-Dec 1996		Jan-Dec 1997		Jan-June 1998	
	n	%	n	%	n	%
14 years	5	0.1	0	0.0	0	0.0
15-19 years	4556	18.7	5011	20.4	2448	18.2
20-24 years	6437	26.4	6660	27.1	3649	27.2
25-29 years	4998	20.5	4728	19.2	2845	21.2
30-34 years	3453	14.2	3121	12.7	1828	13.6
35-39 years	2074	8.5	1980	8.1	1162	8.7
40-44 years	1118	4.6	1129	4.6	742	5.5
45-49 years	571	2.3	522	2.1	296	2.2
50+ years	534	2.2	442	1.8	313	2.3
Unknown	616	2.5	971	4.0	145	1.1
Total	24362	100.0	24564	100.0	13428	100.0

Gender

The sex of offenders appearing on drug charges was also recorded in each year. Males substantially outnumbered females, accounting for 84.3% of charges finalised in 1996, 85.5% in 1997 and 83.4% in the first six months of 1998 (Figure 50).

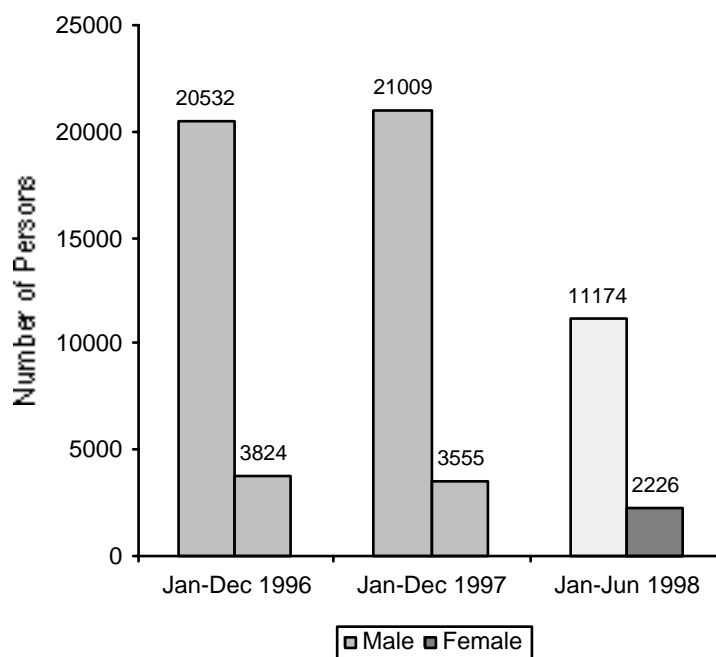


Figure 50: Number of persons appearing on drug charges in Victorian Magistrates' Courts by gender, 1996-1998.

Source: Criminal Justice Statistics and Research Unit database.

Charge type

The most commonly heard offence type for all drug charges was possession (Table 27; Figure 51). There were 9727 possession charges heard in 1996 (39.9% of all drug-related charges), 9770 heard in 1997 (39.8%) and 5357 for the first six months of 1998 (39.9%). Of course, it is impossible to be certain what proportion of these referred to cannabis rather than other drugs. The second most commonly occurring offence was that of use (34.2% in 1996, 32.7% in 1997 and 32.2% for the first 6 months of 1998). Once again it is unclear what proportion of these refer to cannabis. Cultivation offences were most likely to involve cannabis, although it is possible that a small number of charges were laid in relation to the growing of opium poppies. There were 2670 (11%) cultivation offences in 1996, 2417 (9.8%) in 1997 and 1362 (10.1%) in the first half of 1998. Cultivation offences accounted for 0.8% of all charges finalised in Victorian Magistrates' Courts in 1997.

Table 27: Number and percentages of drug charges heard in Victorian Magistrates' Courts by charge type, 1996-1998.

Source: Criminal Justice Statistics and Research Unit database.

	Jan-Dec 1996		Jan-Dec 1997		Jan-June 1998	
	n	%	n	%	n	%
Possession	9727	39.9	9770	39.8	5357	39.9
Use	8323	34.2	8037	32.7	4321	32.2
Cultivate	2670	11.0	2417	9.8	1362	10.1
Traffic	2257	9.3	2846	11.6	1818	13.5
Other	1385	5.7	1494	6.1	570	4.2

Total	24362	100.0	24564	100.0	13428	100.0
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A further picture of the nature of drug offences heard in Victorian Magistrates' Courts can be gained from Figure 51 below. This graph is reproduced from one appearing in *Magistrates' Court Victoria (1997, p.92)*. It shows the breakdown of summary drug offences heard during 1997. It should be noted that the data is person based (n=6592), rather than charge based, which may account for the lower absolute numbers compared with the CJS&RU data.

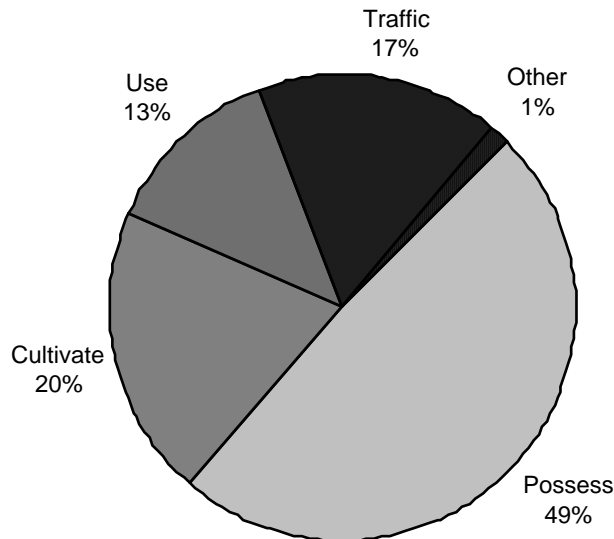


Figure 51: Number of persons appearing in Victorian Magistrates' Courts by charge type, 1997 (n=6592)

Source: Magistrates' Court Victoria (1997), p.92.

Pleas

It may be seen from Table 28 and Figure 52 that most drug-related charges were met with a plea of guilty. In 1996, 13575 (55.7%) drug charges were pleaded guilty to, 13387 (54.5%) in 1997 and 7037 (52.4%) in 1998. The next most common responses were for either no plea to be entered (between 22% and 24% in each year) or for the matter to be dealt with ex parte (between 6% and 7%).

Table 28: Number and percentages of drug charges heard in Victorian Magistrates' Courts by plea, 1996-1998.

Source: Criminal Justice Statistics and Research Unit database.

	Jan-Dec 1996		Jan-Dec 1997		Jan-June 1998	
	n	%	n	%	n	%
Guilty	13575	55.7	13387	54.5	7037	52.4
No plea	5358	22.0	5837	23.8	3071	22.9
Ex parte	1637	6.7	1610	6.6	850	6.3
Not guilty	1073	4.4	1156	4.7	584	4.3
Plea reserved	965	4.0	866	3.5	817	6.1
Not known	779	3.2	888	3.6	609	4.5
Adjourned	759	3.1	561	2.3	294	2.2
Refused to plea	216	0.9	259	1.1	166	1.2
Total	24362	100.0	24564	100.0	13428	100.0

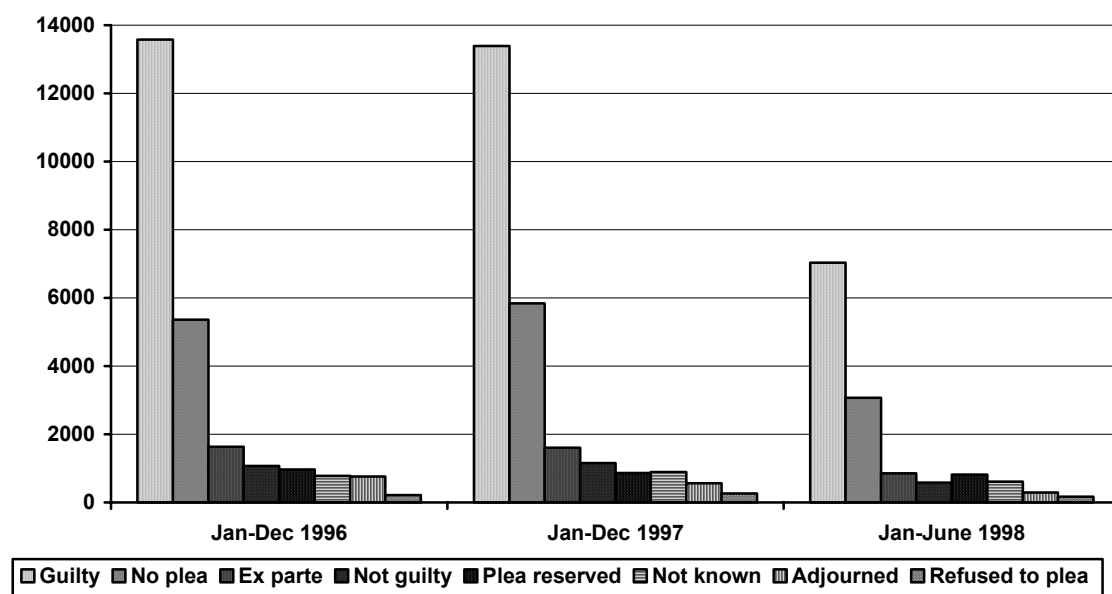


Figure 52: Number of drug charges heard in Victorian Magistrates' Courts by plea, 1996-1998

Source: Criminal Justice Statistics and Research Unit database.

The different charge types were considered in terms of plea. Almost 60% of possession and cultivation charges were met with a plea of guilty in both 1996 and 1997. There were fewer pleas of guilty to traffic charges (32.8% in 1996 and 37.1% in 1997). The next most common response to all drug charges was 'no plea' (Table 29).

The regulation of cannabis possession, use and supply

Table 29: Number and percentage of use, possess, traffic, cultivate and other drug charges heard in Victorian Magistrates' Courts by plea, 1996, 1997

Source: Criminal Justice Statistics and Research Unit database.

	Use		Possess		Traffic		Cultivate		Other		Total	
	n	%	n	%	n	%	n	%	n	%	n	%
1996												
Guilty	4954	59.5	5573	57.3	740	32.8	1581	59.2	727	52.5	13575	55.7
No plea	1558	18.7	2074	21.3	793	35.1	537	20.1	396	28.6	5358	22.0
Ex Parte	745	9.0	590	6.1	126	5.6	116	4.3	60	4.3	1637	6.7
Not guilty	297	3.6	420	4.3	204	9.0	129	4.8	23	1.7	1073	4.4
Plea reserv'd	286	3.4	369	3.8	128	5.7	126	4.7	56	4.0	965	4.0
DK	223	2.7	304	3.1	111	4.9	72	2.7	69	5.0	779	3.2
Adjourn	214	2.6	309	3.2	114	5.1	89	3.3	33	2.4	759	3.1
Refused to plea	46	0.6	88	0.9	41	1.8	20	0.7	21	1.5	216	0.9
Total	8323	100.0	9727	100.0	2257	100.0	2670	100.0	1385	100.0	24362	100.0
1997												
Guilty	4716	58.7	5426	55.5	1055	37.1	1373	56.8	817	54.7	13387	54.5
No plea	1608	20.0	2269	23.2	1039	36.5	539	22.3	382	25.6	5837	23.8
Ex Parte	715	8.9	600	6.1	123	4.3	109	4.5	63	4.2	1610	6.6
Not guilty	272	3.4	443	4.5	249	8.7	138	5.7	54	3.6	1156	4.7
Plea reserv'd	243	3.0	343	3.5	130	4.6	101	4.2	49	3.3	866	3.5
DK	242	3.0	360	3.7	111	3.9	83	3.4	92	6.2	888	3.6
Adjourn	163	2.0	226	2.3	88	3.1	62	2.6	22	1.5	561	2.3
Refused to plea	78	1.0	103	1.1	51	1.8	12	0.5	15	1.0	259	1.1
Total	8037	100.0	9770	100.0	2846	100.0	2417	100.0	1494	100.0	24564	100.0

Court outcomes

Most drug-related offences were upheld in court, with only 13.5% in 1996, 15% in 1997 and 15.4% in the first six months of 1998 found to be not proven (Table 30). Among those proven, the most commonly occurring outcome was a fine (approximately one third of all possible outcomes in each year), followed by a bond (27.7% of all possible outcomes in 1996, 21.9% in 1997 and 19.5% in the first six months of 1998).

Table 30: Number and percentage of drug charges heard in Victorian Magistrates' Courts by outcome, 1996-1998.

Source: Criminal Justice Statistics and Research Unit database.

	Jan-Dec 1996		Jan-Dec 1997		Jan-June 1998	
	n	%	n	%	n	%
Fine	8082	33.2	7844	31.9	4237	31.6
Bond	6743	27.7	5384	21.9	2623	19.5
C.B.O	2411	9.9	2562	10.4	1476	11.0
Custodial	1655	6.8	2368	9.6	1413	10.5
Suspended	1137	4.7	1364	5.6	789	5.9
Other	757	3.1	922	3.8	515	3.8
I.C.O.	300	1.2	442	1.8	310	2.3
Not proven	3277	13.5	3678	15.0	2065	15.4
Total	24362	100.0	24564	100.0	13428	100.0

The outcome for the different charge types was similar in 1996 and 1997. In both years more than 90% of use and cultivation charges were proven, while over 80% of possession charges were proven. Approximately two thirds of trafficking charges were upheld (Table 31). Figure 53 presents the proportion of each type of charge sustained in 1997.

Table 31: Number and percentage of use, possess, traffic, cultivate and other drug charges heard in Victorian Magistrates' Courts by outcome, 1996, 1997.

Source: Criminal Justice Statistics and Research Unit database.

	Use		Possess		Traffic		Cultivate		Other		Total	
	n	%	n	%	n	%	n	%	n	%	n	%
1996												
Proven	7874	94.6	8248	84.8	1484	65.8	2480	92.9	999	72.1	21085	86.5
Not proven	449	5.4	1479	15.2	773	34.2	190	7.1	386	27.9	3277	13.5
Total	8323	100.0	9727	100.0	2257	100.0	2670	100.0	1385	100.0	24362	100.0
1997												
Proven	7624	94.9	8074	82.6	1966	69.1	2239	92.6	983	65.8	20886	85.0
Not proven	413	5.1	1696	17.4	880	30.9	178	7.4	511	34.2	3678	15.0
Total	8037	100.0	9770	100.0	2846	100.0	2417	100.0	1494	100.0	24564	100.0

The regulation of cannabis possession, use and supply

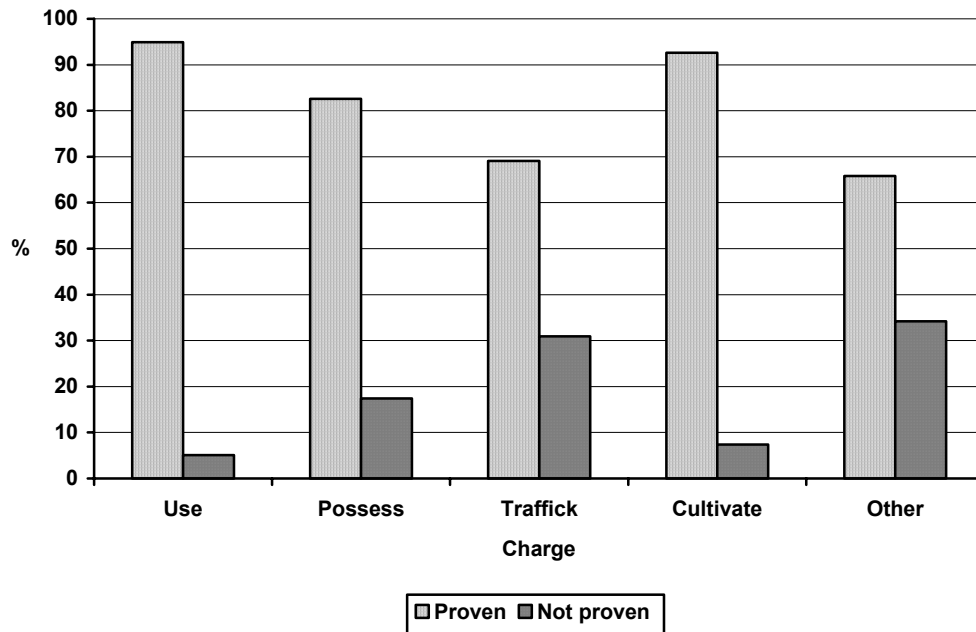


Figure 53: Number of use, possess, traffic, cultivate and other drug charges heard in Victorian Magistrates' Courts by outcome, 1997

Source: Criminal Justice Statistics and Research Unit database.

Table 32 shows that of those charges proven in 1996 and 1997, the most commonly used disposition was a fine, except in the case of trafficking. Approximately two fifths of use, possession, cultivation and other drug charges were dealt with by way of a fine, compared to about a tenth of trafficking charges. Custodial sentences and suspended sentences were the most common outcome for trafficking charges which probably reflects the greater seriousness with which such charges are generally viewed.

Table 32: Number and percentage of use, possess, traffic, cultivate and other drug charges heard in Victorian Magistrates' Courts by disposition, 1996, 1997

Source: Criminal Justice Statistics and Research Unit database.

	Use		Possess		Traffic		Cultivate		Other		Total	
	n	%	n	%	n	%	n	%	n	%	n	%
1996												
Fine	3294	41.8	3283	39.8	190	12.8	1069	43.1	246	24.6	8082	38.3
Bond	2616	33.2	2881	34.9	63	4.2	910	36.7	273	27.3	6743	32.0
C.B.O	836	10.6	881	10.7	259	17.5	269	10.8	166	16.6	2411	11.4
Custodial	520	6.6	546	6.6	392	26.4	71	2.9	126	12.6	1655	7.8
Other	338	4.3	275	3.3	40	2.7	31	1.3	73	7.3	757	3.6
Suspnd'd	221	2.8	294	3.6	422	28.4	95	3.8	105	10.5	1137	5.4
I.C.O.	49	0.6	88	1.1	118	8.0	35	1.4	10	1.0	300	1.4
Total proven	7874	100.0	8248	100.0	1484	100.0	2480	100.0	999	100.0	21085	100.0
1997												
Fine	3116	40.9	3118	38.6	169	8.6	990	44.2	451	45.9	7844	37.6
Bond	2079	27.3	2363	29.3	58	3.0	691	30.9	193	19.6	5384	25.8
C.B.O	885	11.6	923	11.4	350	17.8	283	12.6	121	12.3	2562	12.3
Custodial	764	10.0	798	9.9	646	32.9	56	2.5	104	10.6	2368	11.3
Other	439	5.8	343	4.2	63	3.2	26	1.2	51	5.2	922	4.4
Suspnd'd	249	3.3	390	4.8	539	27.4	136	6.1	50	5.1	1364	6.5
I.C.O.	92	1.2	139	1.7	141	7.2	57	2.5	13	1.3	442	2.1
Total proven	7624	100.0	8074	100.0	1966	100.0	2239	100.0	983	100.0	20886	100.0

APPENDIX 7

RECOMMENDED MODEL WITH EXPLANATORY NOTES

PASTE IN MODEL+NOTES2R